

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0312

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 134302). Claimant filed a timely request for hearing. On March 12, 2015, ALJ Upite conducted a hearing, and on March 13, 2015 issued Hearing Decision 15-UI-35125, concluding the employer discharged claimant, but not for misconduct. On March 20, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument.

FINDINGS OF FACT: (1) Salem Hospital employed claimant from March 15, 2010 to January 19, 2015, last as an environmental services supervisor.

(2) The employer prohibited employees from discussing confidential patient information when it was not required in the performance their job duties, or sharing such information with someone who did not have a "need to know." Exhibit 1 at 14. Claimant understood the employer's expectations.

(3) On December 15, 2014, claimant was the environmental services supervisor responsible for the employer's emergency room. An employee claimant had supervised was admitted to the emergency room in critical condition. Claimant was made aware of the situation, and observed the employee while speaking to his brother. Claimant left the emergency room and continued working, but was extremely upset and in tears. An employee became concerned, and asked claimant why she appeared so upset. Claimant replied that it was because the employee had been admitted to the emergency room. Claimant realized that she had inadvertently violated the employer's expectations regarding the discussion and sharing of confidential patient information, and asked the employee not to repeat the information.

(4) The employer discharged claimant for telling the employee that the other employee had been admitted to the emergency room.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's discharge was not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer had a right to prohibit employees from discussing confidential patient information when it was not required in the performance their job duties, or sharing such information with someone who did not have a "need to know." Claimant inadvertently violated, and therefore did not willfully violate, the employers' expectations by telling an employee that another employee had been admitted to the employer's emergency room. A conclusion that the violation was wantonly negligent requires a showing that claimant was conscious of her conduct, and was indifferent to the consequences of her actions. Claimant was so distraught after having observed the employee in the emergency room that the other employee became concerned, and asked claimant why she appeared so upset. At hearing claimant testified that she could not even remember whether she replied only that an "employee" had been admitted to the emergency room, or referred to the employee by name. Transcript at 23-24. The record fails to show that claimant's reply was a conscious act, and not a reflexive response to the employee's question. Nor does the record show that claimant was indifferent to the consequences of her actions, given that when she realized she had inadvertently violated the employer's expectations regarding the disclosure of confidential patient information, she immediately asked the employee not to repeat the information. Absent such showings, we cannot find that claimant was wantonly negligent.

We therefore conclude that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 15-UI-35125 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: May 5, 2015

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the

‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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