

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0317

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 81303). Claimant filed a timely request for hearing. On March 9, 2015, ALJ Shoemake conducted a hearing, and on March 16, 2015, issued Hearing Decision 15-UI-35156, affirming the Department's decision. On March 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pheasant Pointe LLC, an assisted living facility, employed claimant as a medication aide from January 15, 2013 to December 17, 2014.

(2) The employer expected its medication aides to administer medication to a resident in accordance with the resident's medication administration record (MAR), which included the resident's physician orders, and also the residents' rights regarding medication administration. Those rights generally were described as the right to the correct medication, in the correct dose, at the correct time, in the correct manner, with the right documentation and knowledge of the effects and possible side effects of the medication. Claimant was aware of the employer's expectations because she received initial and ongoing training from the employer regarding those expectations.

(3) In May 2013, a resident's MAR contained a physician order that the resident receive two thyroid pills at a prescribed time and that the medication administrator observe the resident take the medication. Claimant gave the resident three thyroid pills to take instead of the prescribed two and did not observe the resident take the medication. A family member observed claimant's error, prevented the resident from taking three pills and reported the error to the employer. The employer gave claimant a written counseling notice, which claimant signed, that reiterated its expectations and emphasized the resident rights regarding medication administration. Later that same month, claimant accidentally administered the wrong medication to a resident after reviewing the resident's MAR and received another counselling notice for her mistake which claimant signed.

(4) On or around December 3, 2014, the employer learned from a routine audit that claimant had administered the wrong dosage of a narcotic painkiller to a resident 13 times since October 2014, when the resident's physician reduced the resident's daily dosage and frequency of the narcotic from one to two doses every three hours as needed to one dose every twelve hours. Claimant did not review the resident's MAR in any of the 13 instances and administered the medication to the resident in accordance with the original dosage and frequency. When confronted by the employer, claimant explained that she had not reviewed the MAR because the prescription change had not been "flagged" on the resident's computer profile and claimant was a "creature of habit." Audio Record ~ 28:00 to 32:30; 33:30 to 34:15.

(5) On December 17, 2014, the employer discharged claimant for the medication administration errors regarding the single resident it had discovered from its recent audit.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. The employer discharged claimant for misconduct under ORS 657.176(2)(a).

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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for administering a narcotic medication to a resident in the wrong dosage and frequency 13 times in a two month period because she failed to look at the resident's MAR that contained the physician order reducing the prescribed dosage and frequency. At hearing, claimant asserted that although in May 2013 she was required to review a resident's MAR before administering medication, after the employer switched to a computer system she was only required to review the MAR when a change was flagged on the resident's computer profile. Audio Record ~ 28:00 to 32:00. However, claimant did not dispute the employer's assertion that claimant's explanation concerning her obligation to review a resident's MAR was inconsistent with the regular monthly training all medication aides received. Audio Record ~ 34:30 to 36:00. Claimant's testimony regarding her understanding of that obligation was both internally inconsistent and implausible as a matter of common sense given her regular training. More likely than not, claimant understood she was required to review the resident's MAR each time she administered medication to a resident. By failing to review the MAR of the resident in question 13 times in a two month period and consequently administering the wrong dose of a narcotic on each occasion because of her "habit", particularly after being disciplined once before for administering the wrong dosage of a medication to a resident, claimant demonstrated conscious indifference to the consequences of her failures to check the resident's MAR. On each occasion that she administered the wrong dosage, she was at least wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-

030-0038(3)(b) because her conduct was not isolated having occurred 13 times over a two-month period. Nor can claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant failed to show that she sincerely believed, or had a factual basis for believing, the employer would tolerate her conduct in failing to check a patient's medical administration record after receiving regular training on the importance of that obligation and the potential consequences for the patient in failing to perform it.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 15-UI-35156 is affirmed.

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

DATE of Service: May 8, 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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