

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0364

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct because of his commission of theft in connection with work (decision # 111858). Claimant filed a timely request for hearing. On March 16, 2015, ALJ Clink conducted a hearing, and on March 20, 2015 issued Hearing Decision 15-UI-35505, concluding that claimant was discharged for misconduct, but did not commit theft in connection with work. On March 31, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

No party applied for review of that portion of Hearing Decision 15-UI-35505 concluding that claimant did not commit theft in connection with work. EAB therefore limited its review to whether claimant was discharged for misconduct.

FINDINGS OF FACT: (1) Empire Airlines Inc. employed claimant as a line maintenance aircraft mechanic from February 28, 2011 to December 17, 2014.

(2) The employer prohibited employees from leaving work before the end of their shift without a supervisor's permission. The employer expected employees to accurately report the time they left work.

(3) On December 12, 2014, claimant left work before the end of his shift without a supervisor's permission, and reported that he left work at the end of his shift. On December 13, 2014, claimant again left work early without a supervisor's permission, and again reported that he left work at the end of his shift.

(4) The employer discharged claimant for his conduct on December 12 and 13, 2014.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

An employer has the right to prohibit an employee from leaving work before the end of his shift without a supervisor's permission. An employer also has the right to expect an employee to accurately report the time he left work. Claimant knew or should have known the leaving work before the end of his shifts on December 12 and 13, 2014, and reporting that he left work at the end of his shifts, probably violated the employer's expectations. Claimant's conscious decisions to leave work early without asking a supervisor's permission, and report that he left work at the end of his shifts, demonstrated indifference to the consequences of his actions. Claimant's conduct therefore was, at best, wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. For an act to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Claimant exercised poor judgment each time he left work before the end of his shift without a supervisor's permission, and reported that he left work at the end of his shift. Claimant's exercise of poor judgment therefore was a repeated act, and not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error. The record fails to show claimant sincerely believed, or had a rational basis for believing, that leaving work before the end of his shifts without a supervisor's permission, or reporting that he left work at the end of his shifts, complied with the employer's expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 15-UI-35505 is affirmed.

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

DATE of Service: May 19, 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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