

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0614

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 75639). The employer filed a timely request for hearing. On May 14, 2015, ALJ Clink conducted a hearing at which claimant did not appear, and on May 21, 2015 issued Hearing Decision 15-UI-38871, concluding the employer discharged claimant for misconduct. On May 27, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Graphic Packaging International Inc. employed claimant from April 23, 1992 to March 5, 2015 as a machine operator.

(2) The employer required claimant to shut down the machine he was using if he had to leave the machine unattended or leave a helper in charge of the machine. The employer also expected claimant to wait for the machine operator for the next shift to relieve claimant from his duties before leaving his machine and clocking out. Leaving a machine unattended by a machine operator or a foreman could result in an inferior product, and posed a risk of damage to the machine and injury to nearby employees. Claimant understood the employer's expectations.

(3) A machine operator may turn off a machine immediately by using a shut-off button in case of emergency or during breaks, or a machine operator may call a foreman to run the machine if the operator needed to leave it.

(4) On July 25, 2014, claimant clocked out approximately 30 minutes before the machine operator for the next shift arrived to relieve claimant at his machine. The employer gave claimant a formal written reprimand for this conduct.

(5) On August 20, 2014, claimant left a helper in charge of claimant's machine for 30 minutes while the machine was running. Claimant left the machine to turn in paperwork the employer expected him to submit at the end of his shift. The employer gave claimant a final written reprimand for this conduct.

(6) On February 26, 2015, claimant was operating a machine, and left it unattended for ten minutes while it was running at full speed. Claimant was in the break room for all or part of the time he left the machine unattended. Claimant told his supervisor he left the machine to use the bathroom and to make a telephone call. Claimant was not on break at the time.

(7) The employer decided to discharge claimant because he violated the employer's policy by leaving a machine unattended while it was running. On March 5, 2015, the employer agreed to allow claimant to resign in lieu of termination, but was not willing to allow claimant to continue working for the employer.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer discharged claimant for misconduct.

Work Separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The employer asserted that claimant quit work because the employer permitted claimant to quit instead of being discharged. Audio Record at 8:33 to 9:00; Exhibit 1. However, the employer decided to discharge claimant because he left a machine unattended and running at full speed on February 26, 2015, in violation of the employer's policy prohibiting such conduct. In the absence of evidence to the contrary, we infer claimant was willing to continue to work for the employer because claimant reported to work on February 26 and did not initiate the work separation. Although the employer agreed to characterize the work separation as a resignation, the employer decided to sever the employment relationship based on claimant's conduct on February 26, 2015, and was not thereafter willing to allow claimant to work for the employer. Thus, because claimant was willing to continue to work for the employer, but was not allowed to do so, the work separation was a discharge.

Discharge. 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.

The employer had a right to expect claimant to refrain from leaving his machine unattended or in the care of a helper while the machine was running. Claimant understood the employer's expectations because the employer warned him in August and September 2014 to refrain from engaging in such conduct, and as a matter of common sense due to the risk of harm to the machine and employees working near the machine.

The record shows claimant violated the employer's policy on February 26, 2015 by leaving his machine unattended, and running at full speed, for ten minutes while he used the bathroom and made a telephone call. Given that claimant had to know his machine was running and that he was leaving it without stopping it, and that he could have stopped it or called a foreman so he could use the bathroom and attend to any emergency, claimant's conduct in leaving the machine running and unattended was, at best, a wantonly negligent violation of the employer's expectations.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). For conduct to be considered isolated, it must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d)(A). In addition to the final incident on February 26, 2015, claimant engaged in, at best, wantonly negligent behavior on July 25, 2014, when he left his machine unattended before being relieved by the next machine operator on duty, and on August 20, 2014, when he left his helper in charge of his machine, understanding both times that he was expected to be present at his machine while it was running. Claimant's exercise of poor judgment on February 26 was therefore a repeated act, and not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). The record does not show claimant sincerely believed the employer would approve of his conduct, nor, under the circumstances described, did he have any reasonable basis upon which to form such a belief.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 15-UI-38871 is affirmed.

Susan Rossiter and D. P. Hettle, *pro tempore*;
J. S. Cromwell, not participating.

DATE of Service: July 16, 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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