

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0738

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 75616). Claimant filed a timely request for hearing. On June 8, 2015, ALJ M. Davis conducted a hearing, and on June 11, 2015 issued Hearing Decision 15-UI-39916, affirming the Department's decision. On June 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Royal Moore Buick GMC employed claimant as a lot attendant from July 18, 2006 to April 22, 2015.

(2) Claimant's duties included driving vehicles. The employer expected claimant to maintain a valid driver's license as a condition of employment.

(3) In December 2013, claimant's driver's license expired. He did not receive any notifications in the mail, and was not aware that it had expired. Claimant forgot about checking his license expiration, and no one brought it to his attention.

(4) On April 16, 2015, the employer learned that claimant's license was expired, suspended claimant and instructed him to renew it as quickly as he could. Claimant told the employer that he could not afford to renew his license until after he was paid on April 20, 2015. The employer did not give claimant a deadline for renewing his license or tell him he would be discharged unless he renewed it by a particular date.

(5) The employer did not hear from claimant again after suspending him. On April 22, 2015, the employer discharged claimant for failing to renew his driver's license.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude 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.

The employer discharged claimant, in part, for failing to maintain his driver's license. The willful or wantonly negligent failure to maintain a license necessary to the performance of the occupation is misconduct if it is reasonably attributable to the individual. OAR 471-030-0038(3)(c). A driver's license was necessary to the performance of claimant's duties as a lot attendant, as an integral duty to that occupation involved driving vehicles. The loss of license was reasonably attributable to claimant's failure to renew it. However, claimant's failure to renew the license was not willful or wantonly negligent. Willful and wantonly negligent conduct both require, at a minimum, conscious conduct. In this case, claimant was not aware it expired, forgot to check it for expiration, and was never notified by a third party that it was expired. We therefore conclude that claimant was not conscious of his loss of license, and his loss of license was, therefore, not attributable to willful or wantonly negligent conduct on his part.

The employer also discharged claimant for failing contact the employer or renew his license between April 16, 2015 and April 22, 2015, the date the employer discharged him. The ALJ concluded that claimant's conduct was wantonly negligent, reasoning that, after having been suspended and instructed to renew his license, "[c]laimant should have understood that if he did not maintain contact with the employer or renew his driver's license, he may be discharged." Hearing Decision 15-UI-33890 at 3. We disagree, however, because the record fails to show that the employer notified claimant of any expectation that he maintain contact with it, or how frequently, or gave him a deadline by which his license had to be renewed. Claimant was not capable of complying with expectations of which he was not made aware, nor could he reasonably be expected to do so. An individual's failure to comply with an unreasonable employer expectation, whether consciously or, as here, not consciously, is not misconduct under OAR 471-030-0038(1)(d)(C).

We conclude, therefore, that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 15-UI-39916 is set aside, as outlined above.¹

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

DATE of Service: July 31, 2015

¹ This decision reverses a hearing decision that denied benefits. If any benefits are payable, please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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