

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0939

Adopted
No Disqualification

PROCEDURAL HISTORY: On June 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 123011). Claimant filed a timely request for hearing. On July 28, 2015, ALJ Triana conducted a hearing, and on July 29, 2015 issued Hearing Decision 15-UI-42217, concluding claimant's discharge was not for misconduct. On August 4, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer argued that claimant should be denied benefits, arguing that she was not discharged because of her absence or failure to call the employer, but instead that the "primary reason" for her discharge were her "work ethics, poor performance and shipping errors." However, although the record shows that claimant had a history of work performance and shipping error problems during her employment, the employer did not decide to discharge her until after the final absence and alleged failure to communicate about the absence to the employer. Therefore, that incident was the proximate cause of the work separation, and the initial focus of the misconduct analysis. Only if claimant's conduct in that incident was willful or wantonly negligent would the prior incidents the employer described be analyzed. Because we have concluded that claimant's conduct in the final incident was not willful or wantonly negligent, the prior incidents the employer described are not at issue. We considered the employer's remaining arguments when reaching this decision.

EAB reviewed the entire hearing record. On de novo review and pursuant to ORS 657.275(2), the hearing decision under review is adopted.

DECISION: Hearing Decision 15-UI-42217 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 9, 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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