

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0950

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 112821). Claimant filed a timely request for hearing. On July 24, 2015, ALJ Shoemake conducted a hearing, and on July 27, 2015, issued Hearing Decision 15-UI-42034, affirming the administrative decision. On August 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lincare, a medical supply and equipment company, employed claimant as a service representative from March 6, 2012 through June 4, 2015.

(2) The main job duty of a service representative was to deliver medical supplies and equipment to patients in their homes. They were also required to complete and submit various forms regarding their deliveries. Among the forms a service representative was expected to complete was a delivery and fill log in which the representative recorded the name of each patient to whom supplies or equipment were delivered, the time of arrival at and departure from the patient's home, and activities performed at the patient's home. Service representatives were required to turn in completed forms at the end of their work day, but were given 48 hours to turn in their completed delivery and fill logs. Claimant knew about and understood the employer's expectations regarding forms and the delivery and fill log.

(3) On May 23, 2014, the employer's branch manager orally reprimanded claimant for failing to timely complete required forms.

(4) On May 6, 2015, the branch manager reprimanded claimant in writing for failing to promptly turn in required forms; claimant was a day or two late in turning in these forms. Audio recording at 18:35. As a result of claimant's failure to submit these forms, a shipment of medication to a patient was delayed by a few days. In the written reprimand, the branch manager warned claimant that failure to improve his

performance would subject him to further corrective action up to and including discharge. Audio recording at 11:15. Claimant signed the reprimand.

(5) On June 2, 2015, the branch manager found approximately two months of incomplete delivery and fill logs on claimant's desk. The branch manager left claimant a note in which he directed claimant to complete and submit the logs. Claimant turned in the completed the logs on June 3, 2015.

(6) On June 4, 2015, the employer discharged claimant for failure to complete and submit forms in a timely manner.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that the employer discharged claimant 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 carries the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because he did not promptly complete and submit forms he was required to fill out. Claimant knew and understood that the employer expected him to record information about his deliveries of medical supplies and equipment in a daily delivery and fill log, and to turn this log in within 48 hours. Claimant also knew that his job could be in jeopardy if he did not timely submit these logs because the employer had reprimanded him in writing about this issue in May 2015, when he was one or two days late in turning in required forms. Absent any reasonable explanation, claimant's failure to timely complete his delivery and fill forms for two months constituted, at a minimum, a wantonly negligent violation of the employer's standards.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). An "isolated instance of poor judgment" is 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). Here, the record shows that prior to the final incident that resulted in his discharge, claimant was twice disciplined – once orally in May 2014 and a second time in writing in May 2015– for failing to complete required paperwork in a timely manner. Claimant's failure to timely complete and submit required forms in June 2015 was not an isolated or infrequent occurrence.

Claimant's behavior cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant did not contend that his failure to timely complete his delivery and fill forms for two months resulted from his mistaken understanding of the employer's standards, or that he sincerely but erroneously believed the employer would condone his tardy completion and submission of these forms.

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

DECISION: Hearing Decision 15-UI-42034 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 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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