

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1338

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 94354). The employer filed a timely request for hearing. On October 20, 2015, ALJ Vincent conducted a hearing, and on October 22, 2015 issued Hearing Decision 15-UI-46413, affirming the Department's decision. On November 12, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Concept Systems, Inc. employed claimant as an electrical panel technician from July 1, 2013 to August 3, 2015.

(2) The employer expected claimant to perform his work competently, use the correct gauge of wire, and avoid damaging wiring while working. Claimant should have known the expectation as a matter of common sense. The employer had concerns about claimant's work after attributing some poor quality work to claimant in April 2015.

(3) On July 31, 2015, the employer discovered that claimant used the wrong gauge of wire while working on an electrical panel. Claimant had used the gauge charts the employer provided when determining what gauge of wire to use when doing the work. The employer concluded that claimant was responsible for the poor quality work, and concluded he had either failed to use a gauge chart or used the wrong gauge charts.

(4) On August 3, 2015, the employer discharged claimant because of the poor quality of his work.

CONCLUSIONS AND REASONS: We agree with the ALJ 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 established that claimant's work on July 31, 2015 did not meet its expectations because the quality of the work was poor. However, for claimant's failure to meet expectations to be considered misconduct, it must be the result of willful or conscious conduct on claimant's part. In this case, claimant credibly testified that he performed his work on July 31, 2015 using the resources available to him through the employer, and denied having been responsible for the poor quality work. In other words, claimant did not intentionally perform poor quality work, and the record fails to show that he was aware that his work on that date was inadequate. Absent a basis for determining that claimant was not a credible witness, we find it is just as likely as not that the poor quality of claimant's work on July 31, 2015, if attributable to claimant, was, at worst, due to a mistake or simple negligence, and was not the result of willful or wantonly negligent misconduct.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 15-UI-46413 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 17, 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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