

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1400

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 151754). Claimant filed a timely request for hearing. On October 20, 2015 and November 4, 2015, ALJ Wyatt conducted a hearing, and on November 12, 2015 issued Hearing Decision 15-UI-47567, affirming the Department's decision. On November 24, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Salem Group LLC employed claimant as a hotel room cleaner from July 30, 2007 to August 5, 2015.

(2) The employer prohibited employees from being rude to their supervisors and coworkers. Claimant understood the expectation after having been warned and suspended for violations in 2014 and 2015. The employer admonished claimant at least once that her rude and uncooperative behavior toward her coworkers could result in her discharge from work.

(3) On July 29, 2015, claimant told a room inspector and another coworker that they could not have anything off her housekeeping cart. Claimant knew she was supposed to share the housekeeping cart. Claimant used foul language in speaking with the room inspector and coworker during the incident. The room inspector reported claimant to the employer. During a conversation with claimant, the room inspector and the executive housekeeper, claimant said, "Okay, I'm wrong, I'm bad," but blamed the coworkers for taking supplies from the housekeeping cart when they could have gone to the supply closet. October 20, 2015 hearing, Transcript at 34.

(4) On August 2, 2015, claimant felt frustrated while at work, and was rude, snappy and disrespectful to her coworkers. November 6, 2015 hearing, Transcript at 6, 8. She refused to allow coworkers to use a dirty linen basket even though she knew she should have shared the basket. A second room inspector reported claimant to the executive housekeeper. The executive housekeeper met briefly with claimant to ask how her day was going, and claimant said things were fine and she was not having a problem. Claimant “kind of rolled her eyes” during the meeting, wanted to leave before the executive housekeeper had finished speaking with her, blamed her coworkers for any problems, and, ultimately, left while the executive housekeeper was “in the middle of talking to her.” October 20, 2015 hearing, Transcript at 18

(5) On two more occasions during the August 2nd shift, the second room inspector reported claimant to the executive housekeeper. The second room inspector reported that claimant refused to share a dirty linen basket with her coworkers, had been “snappy” and “disrespectful,” and was rude throughout the day. October 20, 2015 hearing, Transcript at 18. The second room inspector made that report while in tears.

(6) The executive housekeeper met with claimant a second time about her behavior, and asked why she had refused to share her linen basket. Claimant replied, “It was my basket, they can get their own basket.” October 20, 2015 hearing, Transcript at 19. Claimant became upset during the meeting, threw her keys toward the executive housekeeper and used foul language during the meeting. Claimant knew at the time she was being rude and disrespectful toward the executive housekeeper. November 4, 2015 hearing, Transcript at 8.

(7) On August 5, 2015, the employer discharged claimant because of her behavior with her coworkers and the executive housekeeper. During the discharge meeting claimant apologized and acknowledged that she had behaved in an inappropriate manner toward her coworkers.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ 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 had the right to expect claimant to refrain from rude and disrespectful behavior toward her coworkers and supervisors. Claimant understood the expectation, and understood that the employer might discharge for that type of behavior after she had previously been warned and suspended in 2014 and 2015. On August 2, 2015, claimant was knowingly rude and disrespectful to the executive housekeeper during a meeting with her. Claimant had, earlier that day, been knowingly disrespectful toward her coworkers by refusing to allow them to share her dirty linen basket and by being “snippy” and “disrespectful” toward them while working with them, to the extent that one room inspector was in

tears over claimant's behavior. Although claimant attempted to excuse her conduct or imply that it was outside her ability to control her behavior because she was frustrated over her working conditions, claimant worked under the same kind of frustrating circumstances on many occasions without engaging in that type of behavior. Claimant knew she should not have behaved that way, and knew that her conduct violated the employer's expectations of her, making her conduct on August 2, 2015 wantonly negligent.

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 exercise of poor judgment rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d). Claimant's conduct was not isolated. She committed wantonly negligent violations of the employer's expectations with respect to the way she treated her coworkers on August 2nd, and, later, with time for reflection and to form a new judgment, she knowingly violated the same expectations during a discussion about her conduct with the executive housekeeper. She had also engaged in similar wantonly negligent conduct on July 29th when she knowingly violated the employer's expectations by refusing to allow coworkers to share her housekeeping cart, by using foul language, and, when confronted about her behavior, by making flippant comments and blaming her coworkers for her conduct.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant did not allege or show that she sincerely believed or had any basis for believing the employer would excuse or condone her conduct toward her coworkers and supervisors, particularly given that she admitted at the hearing that she knew her behavior was not permitted, and that she was warned further instances of the type of behavior she demonstrated on August 2nd and July 29th could result in her discharge.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-47567 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 29, 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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