

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-1633

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On July 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 100621). Claimant filed a timely request for hearing. On August 26, 2014, ALJ S. Lee conducted a hearing, and on September 2, 2014 issued Hearing Decision 14-UI-24396, affirming the Department's decision. On September 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On November 6, 2014, EAB issued Appeals Board Decision 2014-EAB-1526, reversing Hearing Decision 14-UI-24396 and remanding this matter to the Office of Administrative Hearings (OAH) for further development of the record. On December 8, 2014, ALJ S. Lee conducted a hearing, and on December 16, 2014 issued Hearing Decision 14-UI-30472, again concluding that the employer discharged claimant for misconduct. On January 5, 2015, claimant filed an application for review of Hearing Decision 14-UI-30472 with EAB.

EAB considered the entire hearing record and claimant's written argument.

FINDINGS OF FACT: (1) Quality Care, Inc. employed claimant as a nursing home administrator from August 21, 2013 to June 12, 2014.

(2) To work as a nursing home administrator in Oregon, claimant was required to maintain an active Oregon nursing home administrator's license. Claimant understood that requirement, and obtained an Oregon nursing home administrator's license in May 2013. The employer expected claimant to maintain an active license. Claimant understood that expectation.

(3) Claimant knew he had to renew his Oregon license before May 31 each year, and that it was illegal for him to perform his occupation without a license, and for the employer to operate a nursing home without a licensed nursing home administrator. Although claimant knew the State of Oregon would not send him a reminder notice to renew his Oregon license, he did not put any reminders on his calendar, telephone, or elsewhere regarding the license renewal, and relied only on his memory to ensure he renewed his license on time.

(4) To renew his license, claimant had to submit a renewal application online, pay the required renewal fee, and provide documentation of having obtained the required annual continuing education. In September 2013, claimant completed some continuing education credits for his license renewal application, but did not verify the credit requirements or obtain other continuing education credits before May 31, 2014.

(5) Claimant failed to renew his license by May 31, 2014. On June 11, 2014, claimant checked his license because he knew it had been approximately one year since he obtained his license, and observed that it had expired on May 31, 2014.

(6) On June 12, 2014, claimant told his employer his license had expired and that he was attempting to renew it. The employer discharged claimant because claimant did not have the active nursing home administrator license required for his position.

CONCLUSIONS AND REASONS: We agree with 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)(c) (August 3, 2011) provides that the willful or wantonly negligent failure to maintain a license necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. 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.

Claimant knew he had to renew his license to work as a nursing home administrator in Oregon. In written argument, as at hearing, claimant asserted that his failure to renew his license was not misconduct, but rather, “a simple mistake” and that he was not indifferent to the consequences of his failure to renew his license because he acted immediately to correct his mistake by telling his employer that his license had expired. Claimant’s Written Argument; Audio Record (December 8, 2014) at 27:44 to 31:00. At issue, however, is the conduct that resulted in claimant’s failure to renew his license, and not his conduct after his license expired. Claimant knew his license was due for renewal by May 31, 2014 because he obtained the license in May 2013, and the license contained the expiration date. Claimant knew it was illegal for him to work without an active license, and that the employer, too, was required to have a licensed administrator on staff.

Despite the importance of maintaining an active license, and although claimant knew the State of Oregon would not send him a renewal notice, he consciously neglected to take any precautions against forgetting to renew his license. Claimant admitted he could have avoided his mistake by putting a reminder on his calendar, telephone, or in his office. Audio Record (August 26, 2014) at 25:06 to 25:35; Audio Record (December 8, 2014) at 35:36 to 35:58. Claimant knew or should have known that failing to keep track of the expiration date on his license would probably result in his failure to renew his license on time. Claimant’s failure to take steps to ensure he renewed his license on time demonstrated

indifference to the consequences of his actions. His failure to maintain an active nursing home administrator license therefore was wantonly negligent, and reasonably attributable to him. The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 14-UI-30472 is affirmed.

Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating.

DATE of Service: February 19, 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 website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.