

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0031

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 113743). Claimant filed a timely request for hearing. On December 30, 2015, ALJ Murdock conducted a hearing, and on January 4, 2016, issued Hearing Decision 16-UI-50381, affirming the administrative decision. On January 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Oregon Department of Human Services employed claimant as a human services specialist from June 10, 1998 until November 18, 2015.

(2) On November 18, 2015, claimant and her union steward were scheduled to meet with two employer representatives and her union steward to begin an investigation into claimant's conduct, which the employer alleged included fraud, behavior that constituted a conflict of interest, and inappropriately disclosure of confidential information. The allegation of fraud involved claimant's use of another person's food stamps. Claimant knew that she had used another person's food stamps, and also knew that her actions in doing so violated the law and the employer's policy. Claimant did not believe, however, that she had disclosed confidential information and did not know what the employer meant by a conflict of interest. Audio Recording at 13:49. Prior to the meeting, claimant's union steward suggested that claimant voluntarily quit her job because the employer was probably going to discharge her. The union steward suggested to claimant that her resignation "would be the appropriate thing to do," under the circumstances. Audio Recording at 12:08.

(3) Rather than participate in the November 18 meeting and the investigation into her conduct, claimant decided to quit her job. She and her union representative executed an agreement with the employer in which included the employer's acceptance of claimant's resignation, effective November 18, 2015, and the employer's agreement to provide prospective employer's with a neutral reference. Audio Recording at 22:12.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010).

Claimant voluntarily quit her job because she believed the employer was going to discharge her. Under OAR 471-0030-0038(5)(b)(F), leaving work without good cause includes “resignation to avoid what would otherwise be a discharge for misconduct or *potential* discharge for misconduct.” (Emphasis added). Here, claimant understood, based on what her union representative told her, that the employer would probably discharge her. We therefore consider whether this potential discharge would have been for misconduct.

OAR 471-030-0038(3)(a) 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. Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b). Claimant used food stamps issued to another individual; she knew this was a violation of the law and the employer's policy. Audio Recording at 13:49. Because claimant knowingly engaged in conduct that violated the employer's expectations, her behavior was, at the least, wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. An act which violates the law is not subject to the exculpatory provisions of OAR 471-030-0038(3)(b). OAR 471-030-0038(1)(d)(D). Claimant's use of another person's food stamps was also not a good faith error. Claimant's use of the other person's food stamps did not result from an erroneous understanding of the employer's policy or a sincere belief that her actions would be acceptable to the employer: claimant admitted that she should not have used the food stamps.

Claimant voluntarily left work to avoid a potential discharge for misconduct. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-50381 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 29, 2016

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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