

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0334

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 133339). Claimant filed a timely request for hearing. On March 2, 2016, ALJ Vincent conducted a hearing, and on March 10, 2016 issued Hearing Decision 16-UI-54760, affirming the Department's decision. On March 23, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2).

FINDINGS OF FACT: (1) Point Trucking, Inc. employed claimant as a commercial driver from April 1, 2009 to December 31, 2015.

(2) The employer expected claimant to avoid at-fault accidents. On December 26, 2015, claimant felt tired while at work but did not feel like she was so tired that she might fall asleep. Claimant nevertheless fell asleep while driving and collided with a parked trailer.

(3) Based on the December 26, 2015 collision and claimant's driving record, the employer concluded that claimant was no longer eligible to drive for its client. On December 31, 2015, the employer discharged her.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that the employer discharged claimant, but 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.¹

The ALJ summarily concluded that the fact claimant had two at-fault accidents in a two-year period demonstrated that she was indifferent to the consequences of her actions, and reasoned that claimant's discharge was for misconduct because her failure to maintain an acceptable driving history was attributable to her own behavior. Hearing Decision 16-UI-54760 at 2. We disagree.

There is no dispute that claimant had an at-fault accident on December 26, 2015, or that she had at least one previous at-fault accident during her employment, and it is irrelevant whether or not claimant's December 26, 2015 at-fault accident rendered her ineligible to drive for the employer's client. The question is whether claimant's December 26, 2015 at-fault accident was the result of willful or wantonly negligent conduct on her part. In this case, claimant unexpectedly fell asleep while driving under circumstances where, although tired, she did not think she was tired enough to fall asleep. She did not intentionally fall asleep, and the record fails to show that claimant was conscious of the risk of falling asleep under the circumstances, much less that she disregarded a known or foreseeable risk by choosing to drive while tired that day. The record also fails to show that she was indifferent to the consequences of falling asleep while driving. Therefore, although claimant was, clearly, at fault for the December 26, 2015 collision, the record fails to show that the collision was the result of willful or wantonly negligent behavior.

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

DECISION: Hearing Decision 16-UI-54760 is set aside, as outlined above.²

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, not participating.

DATE of Service: April 20, 2016

¹ The ALJ erroneously analyzed claimant's work separation under OAR 471-030-0038(3)(c), which sets forth circumstances under which an individual discharged for the loss of a professional license necessary to the performance of an occupation may be disqualified from benefits. That provision does not apply to this case because, while claimant's loss of certification to drive for the employer's client might have prevented her from doing her job with the employer, it did not otherwise prevent her from performing her occupation as a commercial truck driver.

² This decision reverses a hearing decision that denied benefits. Please note that if any benefits are payable, payment may take from several days to two weeks for the Department to complete.

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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