

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0349

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 80127). Claimant filed a timely request for hearing. On March 1, 2016, ALJ Logan conducted a hearing, and on March 9, 2016, issued Hearing Decision 16-UI-54654, affirming the administrative decision. On March 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Walgreens employed claimant as a customer service associate from February 21, 2014 until November 30, 2015.

(2) When a customer made a purchase from the employer, the customer received coupons that offered a discount on future purchases from the employer. The discounts customers received when they used these coupons were paid for by the employer. The employer's policy specified that these coupons were solely for the use of the customers who received them, and also specified that if a customer did not want the coupons, employees were to discard them. Transcript at 6. Claimant knew about and understood this employer policy, because she was trained in this and other cash register policies when she began working for the employer.

(3) During the last several weeks of her work for the employer, claimant used five coupons issued to customers that offered \$3 off the customer's entire purchase of merchandise from the employer. Claimant used coupons she had taken from the trash or found in a shopping cart or in the parking lot of the employer's store.

(4) On November 24, 2015, the employer's asset protection manager interviewed claimant about a refund that claimant had processed for an item claimant had purchased that possibly violated the employer's refund policy. During this interview, claimant told the asset protection manager that she had used five discarded customer coupons to purchase items for herself.

(5) On November 30, 2015, claimant signed an agreement to repay the employer \$15 that the employer had paid on because of claimant's use of the five discarded customer coupons. Also on November 30, 2015, the employer discharged claimant for violating its coupon policy.

CONCLUSION AND REASONS: We agree with the ALJ and conclude 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. 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 knew about and understood the employer's policy that provided that coupons issued to customers were solely for the customers' use, and that required employees to discard these coupons if customers did not want them. Claimant violated this policy when she used five of these coupons to purchase items for herself. Claimant contended, however, that she was unaware that her use of the coupons was contrary to the employer's policy because the policy did not specifically prohibit employees from taking unused coupons from the trash when claimant was either not working for the employer or on a break during her scheduled shift.

Claimant knew, however, that the coupons customers received when they made purchases were to be used only by customers, and that the employer required her to discard coupons that customers did not want. Given her understanding of the policy, we find it unlikely that claimant believed the employer would permit to take coupons from the trash and use them, even when she was not working or on a break. Claimant knew or should have known that her conduct in making personal purchases with unused customers' coupons probably violated the standards of behavior the employer expected of her. Claimant's conduct was therefore at least wantonly negligent.

Claimant's behavior cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). Behavior that would otherwise constitute misconduct may be excused as an isolated instance of poor judgment if it was a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Because claimant used coupons she was not authorized to use on five occasions, her behavior was not a single or infrequent occurrence.

Nor can claimant's behavior be excused as a good faith error. For the reasons discussed above, the record fails to show claimant sincerely believed, and had a rational basis for believing, that the

employer's policy regarding coupons issued to customers allowed her to use discarded coupons. Claimant's behavior therefore did not result from a good faith error.

The employer discharged claimant for misconduct. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-54654 is affirmed.

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

DATE of Service: April 26, 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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