

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0355

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 93843). The employer filed a timely request for hearing. On March 3, 2016, ALJ Vincent conducted a hearing, and on March 11, 2016 issued Hearing Decision 16-UI-54922, affirming the Department's decision. On March 29, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Jefferson County employed claimant from January 6, 2006 to January 6, 2016.

(2) At all relevant times hereto, claimant suffered from mental illness and was impaired by symptoms of her illness. Her symptoms in late December 2015 included hearing hallucinatory sounds of voices and whispering. She was prescribed medication to treat her illness, the side effects of which included agitation.

(3) On December 22, 2015, claimant experienced an episode of mental illness while at her desk. She felt upset and agitated toward the employer's director. On December 23, 2015, while claimant described the incident to a coworker, she picked up a pair of scissors from her desk, opened them, and said she had experienced thoughts of shoving the scissors in the director's throat.

(4) Claimant did not intend her comments as a threat and did not intent to harm the director. Immediately after the incident, claimant contacted her physician. The physician considered claimant's thoughts and behavior uncharacteristic of her, attributed them to the side effects of the medication claimant was taking, and immediately discontinued that prescription.

(5) On January 6, 2016, the employer discharged claimant for threatening violence toward the director.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was 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.

The employer discharged claimant for making a statement construed as a threat of violence toward the director. However, for claimant's comment to be considered disqualifying misconduct for the purpose of unemployment insurance benefits, claimant must have violated the employer's expectations willfully or with wanton negligence. In this case, it appears more likely than not that claimant uttered the threatening statement about the director while suffering symptoms of her mental illness and experiencing side effects of the medication she was prescribed to treat it. There is little to suggest that claimant's comments or feelings about the director were volitional, let alone intentional, or that she said what she said or felt how she felt out of indifference to the consequences of her actions or a conscious disregard for the standards of behavior expected of her. Therefore, the incident was not willful or wantonly negligent misconduct, and claimant is not subject to disqualification from unemployment insurance benefits as a result of her work separation.

DECISION: Hearing Decision 16-UI-54922 is affirmed.

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

DATE of Service: April 21, 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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