

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0628

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 94922). Claimant filed a timely request for hearing. On March 23, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 7, 2016, at which claimant failed to appear. On April 8, 2016, ALJ R. Frank issued Hearing Decision 16-UI-56818, dismissing claimant's hearing request for failure to appear. On April 14, 2016, claimant filed a timely request to reopen. On April 25, 2016, OAH mailed notice of a hearing scheduled for May 9, 2016. On May 9, 2016, ALJ R. Frank conducted a hearing, and on May 13, 2016 issued Hearing Decision 16-UI-59554, allowing claimant's request to reopen and affirming the Department's decision that the employer discharged claimant for misconduct. On May 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

No adversely affected party requested review of the portion of Hearing Decision 16-UI-59554 allowing claimant's request to reopen. We therefore confined this decision to claimant's work separation.

FINDINGS OF FACT: (1) The Oregon Department of Transportation employed claimant as a customer service worker from January 4, 2016 to February 8, 2016.

(2) When claimant completed her job application with the employer, she was asked to provide information about her most recent employment, including her manager's name and contact information. Claimant chose to lie and provide a coworker's name and information instead of her manager's.

(3) On February 8, 2016, the employer discharged claimant for lying on her job application.

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)(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 lying on her job application. Claimant did not dispute that she lied on her job application. As a matter of common sense, the employer had the right to expect employees to be honest when providing information about their work histories and qualifications on their job applications. Claimant knew or should have known that expectation, and willfully violated it.

OAR 471-030-0038(1)(d) and (3)(b) provide that an individual's conduct may be excused from constituting misconduct if it occurred as the result of a good faith error or was an isolated instances of poor judgment that did not exceed mere poor judgment. Claimant did not act in good faith because she did not sincerely believe or have any factual basis for believing the employer would consider it acceptable to lie on her job application. Although claimant's conduct was isolated exercise of poor judgment because it occurred only one time, it nevertheless cannot be excused as an isolated instance of poor judgment because her conduct exceeded mere poor judgment by causing an irreparable breach in the employment relationship, thereby making a continued relationship impossible. *See* OAR 471-030-0038(1)(d)(D). Claimant argued that she lied on her job application to avoid getting a negative reference from her former manager. She argued that she had worked with and for her coworker and was confident she would receive a positive reference from that individual. Although claimant understandably wanted to avoid having her former manager give her a bad reference, claimant might have accomplished the same result in any number of ways, for example, had she withheld listing any name on her job application, made a note in the space provided that she would like to discuss the reference with her prospective employer before providing a name, providing the name but asking the employer not to contact the person, or even by listing her coworker's name but identifying her as a coworker instead of trying to pretend that the coworker had been her manager at that job. Instead, claimant began her relationship with the employer by lying about her work history in a way that not only did not provide the employer with the information it had requested, but was also intended to deceive the employer into believing she had provided it and prevent the employer from discovering her deception. No reasonable employer would trust an individual who began the employment relationship with that sort of deception, nor would any reasonable employer continue to employ such an individual. We therefore conclude that claimant's conduct exceeded mere poor judgment, and cannot be excused as an isolated instance of poor judgment.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-59554 is affirmed.

Susan Rossiter and J. S. Cromwell;

D. P. Hettle, not participating.

DATE of Service: June 24, 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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