

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0763

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 82707). Claimant filed a timely request for hearing. On June 6 and 17, 2016, ALJ Murdock conducted a hearing, and on June 24, 2016, issued Hearing Decision 16-UI-62539, concluding that the employer discharged claimant, but not for misconduct. On June 27, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) The Women's Safety & Resource Center employed claimant from March 2, 2014 until April 12, 2016, last as executive director. Claimant's duties as executive director included approving employee time sheets and employee requests to be reimbursed for work-related travel.

(2) The employer hired claimant's daughter as a court advocate in March 2015. When claimant's daughter was hired, the employer and claimant agreed that the employer's administrative assistant would supervise the daughter's work, but claimant would approve the daughter's time sheets and mileage reimbursement requests. Transcript at 82-83. As a court advocate, claimant's daughter assisted individuals in filing restraining and stalking orders in the county courthouse located in Coquille, Oregon. Claimant's job duties required that she travel daily between the courthouse and various other locations, including the employer's office in Coos Bay, Oregon.¹ Because it was difficult and time-consuming to accurately calculate the number of miles claimant's daughter traveled each day, the administrative

¹ The employer calculated the distance between the employer's office and the courthouse as 21.2 miles, based on www.mapquest.com/directions. Transcript at 9.

assistant instructed claimant's daughter to request reimbursement for 24 miles per day of work-related travel. Transcript at 98, 105-106.

(3) Sometime in October 2015, employees became concerned that claimant and her daughter were falsifying their time records by claiming that they had worked hours they did not actually work. From October 14, 2015 through March 25, 2016, employees recorded numerous days on which they believed that claimant and her daughter reported they had worked eight hours, but had not actually done so.

(4) On March 22, 2016, the shelter advocate upset claimant's daughter. Claimant and the shelter advocate argued angrily about the shelter advocate's treatment of claimant's daughter, and claimant told the shelter advocate that she should not confront employees; instead, the shelter could bring any concerns about other employees' behavior to claimant. Transcript at 63. The shelter advocate felt that claimant had treated her in a rude and disrespectful manner during this argument. Transcript at 32.

(5) After the March 22 incident, the shelter advocate complained to the employer's board of directors about claimant. On March 30, 2016, the board placed claimant on administrative leave while it investigated complaints about claimant it had received from the shelter advocate and other employees. The board members never talked to claimant during this investigation.

(6) On April 12, 2016, the employer discharged claimant because it believed she falsified her time records, approved inaccurate time records and claims for excessive mileage reimbursement for her daughter, and behaved aggressively toward a staff member.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that the employer 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because, based on complaints made by claimant's subordinates, it believed that she falsified her time records, approved her daughter's false time records and inaccurate claims for mileage reimbursement, and behaved aggressively toward a staff member.

In regard to all of these charges, we note that the evidence presented by claimant and her daughter differed markedly from the evidence presented by the employer's witnesses. The employee who served as bookkeeper when claimant worked for the employer testified that it was "well known" that supervision over claimant's daughter, including approval of time records and mileage reimbursement

claims, was to be exercised by someone other than claimant. Transcript at 7. Claimant asserted, however, that although the administrative assistant supervised her daughter's work, the employer expected that claimant would approve her daughter's time sheets. Transcript at 83. Concerning the charge that claimant and her daughter falsified their time records, the employer's witnesses testified that beginning in October 2014, they began to keep notes on the many days that claimant and her daughter reported they worked eight hours, yet arrived late for work, left work early, or took time off during the work day for non-business related purposes. Exhibit 2. Claimant and her daughter testified that their time records were accurate, and that if they left the employer's office during the work day, they did so to perform work-related tasks. Transcript at 49, 53, 103, 104. In regard to the amount of mileage reimbursement claimed by claimant's daughter, the employer's witnesses testified that her claim that she traveled 24 miles per day between the employer's Coos Bay office the courthouse where the daughter was assigned to work was inaccurate, since the distance between the employer's office and the courthouse was 21.2 miles. Transcript at 9. Claimant's daughter, however, asserted that the administrative assistant had instructed her to claim 24 miles a day.

The claim that claimant behaved aggressively toward the shelter advocate arose from a March 22 incident, in which the shelter advocate asserted that claimant yelled at her, and treated her rudely and disrespectfully. Transcript at 31-32. Claimant agreed that she argued with the shelter advocate on March 22, but denied that she yelled. Claimant described the disagreement as one arising from claimant's directive that the shelter advocate bring any concerns about other employees' behavior to claimant. Transcript at 62-63. Absent any reason to doubt the credibility of claimant, her daughter, and the employer's witnesses (and we find none), the evidence regarding the reasons for claimant's discharge was, at best, equally balanced. The employer therefore failed to show by a preponderance of evidence that claimant falsified her time records, approved false time records and inaccurate mileage reimbursements for her daughter, and behaved aggressively toward the shelter advocate.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 16-UI-62539 is affirmed.

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

DATE of Service: August 2, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.