

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1157

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 80737). Claimant filed a timely request for hearing. On September 27, 2016, ALJ Wyatt conducted a hearing, and on September 30, 2016, issued Hearing Decision 16-UI-68354, concluding that the employer discharged claimant, but not for misconduct. On October 17, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) From May 24 until July 8, 2016, Comfort Suites Eugene employed claimant as a front desk agent. The list of duties claimant was expected to perform, which claimant signed on May 24, included greeting customers, processing customers who were checking into the motel, and taking care of customers' requests.

(2) On June 27, 2016, claimant's supervisor orally counseled him about the need to greet all customers and take care of customers' needs during his shift. After receiving this counseling, claimant made an extra effort to be sure he greeted all customers.

(3) On July 1, 2016, two customers complained to claimant that previous occupants of their room had left items in their room refrigerator. The customers, who were going out for dinner, asked that claimant remove the items while they were gone. Claimant, who attended to customers' requests in the order in which he received them, had two additional customer requests that he needed to fulfill before he could remove the items from the customers' refrigerator. Claimant was the only person working at the time he received the complaint, and therefore had no one to whom he could delegate any tasks. Because he was busy attending to two other customer requests, claimant did not remove the items from the refrigerator during the time the customers were out for dinner. These customers were angered by claimant's failure to fulfill their request, and complained to claimant's supervisor.

(4) On July 8, 2016, the employer discharged claimant for providing poor customer service by failing to fulfill the customers' request to remove items from their room refrigerator.

CONCLUSION AND REASONS: We agree 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 connected with work. 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. 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) (August 3, 2011).

The employer discharged claimant for providing poor customer service on July 1, 2016, when he did not respond to customers' request to remove items left by a previous customer from their motel room refrigerator. Because he signed a list of duties he was expected to perform as a front desk agent, claimant knew about and understood the employer's expectation that he attend to customers' needs during his work shift. In addition, claimant's supervisor had counseled him about the need to improve the quality of his customer service on June 27, 2016. Claimant's failure to promptly respond to the customers' request to remove items from their motel room refrigerator was not the result of any deliberate or conscious disregard of the employer's expectations, however. Claimant, who fulfilled customer requests in the order in which he received them, was busy attending to two earlier customer requests he had received and therefore unable to remove the items from the refrigerator during the time the customers were out for dinner. Because all the customers were equally upset about the problems they wanted claimant to solve, he had no reason to give priority to any of the three requests he had received. Audio recording at 23:47. Although the employer asserted that claimant had ample time to take care of all three customer requests during the time the customers were out for dinner, claimant's possible inefficiency in performing his job duties does not constitute misconduct. OAR 471-030-0038(3)(b).

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

DECISION: Hearing Decision 16-UI-68354 is affirmed.

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

DATE of Service: October 31, 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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