

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1255

Affirmed - No Disqualification
(Confirmada - No Descalificación)

PROCEDURAL HISTORY: On September 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 103103). The employer filed a timely request for hearing. On November 1, 2016, ALJ S. Lee conducted a hearing, and on November 4, 2016 issued Hearing Decision 16-UI-70632, affirming the Department's decision. On November 14, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Abby's Legendary Pizza Co. employed claimant from January 1, 2016 to August 18, 2016 as an assistant manager.

(2) The employer permitted only the general manager to make changes to managers' timesheets. The employer expected managers, including assistant managers, to notify the general manager if a change was needed to a manager's timesheet so the general manager could make the change.

(3) On March 3 and July 15, 2016, claimant received warnings after she made changes to her timesheet without having informed the general manager about the changes. Exhibit 1, at 1-3. The warnings did not state that claimant was prohibited from making changes to her timesheet. *Id.*

(4) On August 16, 2016, claimant called the general manager and told her she would be using sick time for the first half of her shift because her children were ill. Claimant reported to work for the second half of her shift. Before she left work at the end of her shift, claimant edited her timesheet to include the sick time she was using for that day. Tuesday, August 16, was the end of the payroll period, and the general manager usually submitted payroll on Wednesday morning.

(5) On August 17, 2016, near the end of her shift, claimant printed her timesheet and saw that it did not contain the 5.5 hours of sick time, so she sent a text message to the general manager stating that she

wanted to use sick time for the hours she missed on August 16. Claimant did not receive a response, so she sent another text message about the sick time to the general manager on August 18, 2016.

(6) On August 18, 2016, the employer discharged claimant for editing her own timesheet on August 16, 2016.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude 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. 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 she violated its timesheet policy on August 16, 2016 by editing her own timesheet instead of having the general manager edit it for her. At hearing, the employer's general manager asserted that claimant knew from training at hire and the general manager's comments to claimant when she received two warnings that the employer expected her to refrain from making changes to her own timesheet, and permitted only the general manager to make changes to other managers' timesheets. Transcript at 6, 8, 19. However, we find the evidence as to whether claimant knew or should have known she was expected to have the general manager make any changes to her timesheet equally balanced. Claimant testified that she was not told she was prohibited from making changes to her timesheet, but understood she was required to notify the general manager when she made any changes. Transcript at 17. Moreover, the two warnings claimant had received warned claimant to refrain from "dishonesty" after having adjusted her timesheets without telling the general manager for time she allegedly had not worked. Exhibit 1 at 1-3. Neither warning stated that claimant was prohibited from making changes to her timesheet that accurately reflected her time, including sick time. *Id.* Nor do we find the employer's expectation so obvious that we can infer that claimant knew or should have known as a matter of common sense that her conduct probably violated the employer's timesheet editing restrictions. The employer therefore failed to establish by a preponderance of the evidence that claimant violated its expectations willfully or with wanton negligence.

We therefore conclude that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 16-UI-70632 is affirmed. *Decisión de la Audiencia 16-UI-70632 queda confirmada.*

DATE of Service: December 8, 2016

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

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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

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