

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1314

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 135351). Claimant filed a timely request for hearing. On November 1, 2016, ALJ Murdock conducted a hearing, and on November 4, 2016 issued Hearing Decision 16-UI-70584, concluding claimant's discharge was not for misconduct. On November 23, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Peacehealth employed claimant as a counselor in its behavioral health department from October 14, 2005 to August 10, 2016.

(2) The employer prohibited employees from accessing patients' medical records unless they had a business reason for doing so, and provided claimant with training to that effect. The employer's policy was consistent with the Health Insurance Portability and Accountability Act (HIPAA), about which claimant was also trained, which also prohibited unnecessary access into patients' confidential health records. Claimant understood the employer's requirement and HIPAA.

(3) In May 2016, a patient the employer considered high profile received care at the employer's facility. On May 2, 2016 and May 4, 2016, the employer met with staff, including claimant, and told them when it was appropriate for staff to access the patient's medical records, specifically, that they were not to access the patient's records without having a business reason.

(4) On June 2, 2016, the high profile patient visited the employer's emergency room for care. One of claimant's coworkers told claimant that the patient was in the emergency room and was going to be

transferred from the emergency room to the behavioral health department. The patient had been treated in the behavioral health department before, and claimant had previously treated the patient.

(5) Claimant wanted to ascertain the patient's condition and safety needs and prepare for the patient's arrival, so she accessed the patient's electronic medical records. She did not see any current notes in the patient's electronic medical record and exited the record. Ultimately the patient was not transferred to the behavioral health department, and claimant did not provide the patient with care, on June 2, 2016.

(6) In August 2016, the employer conducted a medical records audit. The employer discovered at that time that claimant had accessed the high profile patient's records on June 2, 2016, and concluded claimant did not have a valid business reason to access the records because she did not treat the patient on that date. On August 10, 2016, the employer discharged claimant for accessing the patient's medical records without a business reason.

CONCLUSIONS AND REASONS: We agree with 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 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. Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

There is no dispute that the employer instructed claimant, whether the instruction was given to her individually and/or as part of a group, that she was prohibited from accessing the high profile patient's electronic medical records without a business reason for doing so, and, likewise, no dispute that claimant understood the instruction. Nor is there any dispute that claimant accessed that patient's business records on June 2, 2016 despite the fact that she did not ultimately treat that patient that day. The fact in dispute is, in essence, whether or not claimant nevertheless had a business reason for accessing the records.

The employer alleged that because claimant did not provide treatment to the patient she lacked a business reason to access the patient's records. The record shows, however, that claimant did not access the patient's records until after a coworker had informed her the patient was going to be transferred to the behavioral health department where she was working. Claimant accessed the records because she believed she was going to be called upon to treat the patient, and wanted to ascertain the patient's condition, determine the patient's safety needs, and be prepared to care for the patient when the time came. Her testimony about her purpose in accessing the records was not rebutted, and there is no evidence suggesting that claimant accessed them for another reason. Claimant considered those business reasons sufficient to justify accessing the patient's records, and, in claimant's experience, it was

customary for employees to review patients' medical records for those sorts of reasons. Audio recording at ~ 17:30.

Notwithstanding that claimant did not, ultimately, treat that patient on the day she viewed the patient's records, it appears that claimant sincerely believed she had a business need that justified accessing the patient's medical records. It also appears that claimant had a factual basis underlying her belief given her experience of her own and other employees' customary practices as far as preparing to treat patients admitted into the employer's facility. Although claimant's belief that she was justified in accessing the patient's records was, ultimately, mistaken, and the employer ultimately concluded that her conduct constituted a violation of its policies prohibiting unnecessarily accessing patient records, claimant's actions arose out of a good faith belief that she was accessing the patient's medical records for a legitimate business reason, that is, to provide treatment to the patient. As such, the actions that led to her discharge were not the result of an intentional or conscious deviation from the employer's policies or expectations, but were, rather, the result of a good faith error on her part. Good faith errors are not misconduct. Claimant's discharge was not for misconduct, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-70584 is affirmed.

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

DATE of Service:

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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