

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1385

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 144128). The employer filed a timely request for hearing. On November 29, 2016, ALJ S. Lee conducted a hearing, and on December 1, 2016 issued Hearing Decision 16-UI-72081, affirming the Department's decision. On December 9, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Zomerschoe Physical Therapy, PC employed claimant as a front office worker from August 2, 2016 to September 22, 2016.

(2) Claimant had previous work experience working in a medical setting but had never worked in a physical therapy office. Claimant began work while the employer's office manager was away from the office, and the front office employee claimant was hired to replace trained claimant. When the office manager returned to work claimant discovered that the front office employee had trained claimant to perform some duties incorrectly and had failed to train claimant on other duties.

(3) Claimant regularly made errors when performing her work. Some of the mistakes were brought to claimant's attention. The office manager did not say much to claimant when she discovered claimant's mistakes but tried to show claimant how to do the work correctly. Claimant had difficulty keeping track of what she had been trained to do correctly by the employee she replaced, and which tasks she had done wrong and was retrained to do by the office manager

(4) Throughout claimant's employment, the employer's owners and office managers regularly identified errors claimant made with respect to scheduling, patient information and other matters. The owners and office manager did not believe claimant made the mistakes "on purpose," thought that she was "a hard worker," and saw that she was "trying very hard" to do her duties correctly. Audio recording at ~ 10:00, ~ 11:20, ~ 12:40. Ultimately they concluded that claimant made too many mistakes to remain employed with the employer, and, on September 22, 2016, the employer discharged her for that reason.

CONCLUSIONS AND REASONS: We agree with the Department and 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. Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for making too many mistakes when performing her work, but for claimant's mistakes to be considered disqualifying misconduct they must have been the result of willful or wantonly negligent misconduct, and not the result of inefficiency resulting from lack of job skills or experience. There is no dispute that despite claimant's experience working in a medical setting prior to her employment with the employer, she had never worked in a physical therapy office and, on this record, that she was provided with inadequate training in her duties. Claimant testified that she "tried my best" not to make the same mistakes after being corrected. Audio recording at ~ 15:55. The employer's witness testified that claimant was "trying very hard," was "a hard worker" and did not make mistakes "on purpose," but, because of her mistakes, "it just didn't work out for us." Audio recording at ~ 10:00, ~ 11:20, ~ 12:40. Given claimant's efforts to learn and perform her duties correctly, it is more likely than not that claimant's lack of training and inexperience in the sort of office setting the employer were the cause of her repeated mistakes. Mere inefficiency resulting from lack of job skills of experience is not misconduct; claimant's discharge as a result was, therefore, not for misconduct, and she is not disqualified from receiving unemployment benefits because of her work separation.

DECISION: Hearing Decision 16-UI-72081 is affirmed.

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

DATE of Service: December 14, 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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