

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1398

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144741). Claimant filed a timely request for hearing. On November 18, 2016, ALJ Triana conducted a hearing, and on November 23, 2016 issued Hearing Decision 16-UI-71654, concluding the employer discharged claimant, but not for misconduct. On December 13, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument.

FINDINGS OF FACT: (1) The employer, Lithia Motors Support, employed claimant as a lube technician from October 21, 2015 to August 6, 2016.

(2) The employer expected its lube technicians to install the correct parts on customers' vehicles. Before installing a part on a customer's vehicle, a lube technician was required to enter the year, make and model of the customer's vehicle into the employer's computer system, which then displayed the part number. The lube technician was then required to write down the part number and pull a part with the same number. Claimant understood the employer's expectations and required procedures for pulling and installing the correct parts on customers' vehicles.

(3) In late July 2016, claimant installed an oil filter on a customer's vehicle. Before doing so, claimant followed the employer's required procedures for pulling and installing the correct oil filter. However, claimant pulled and installed the wrong oil filter.

(4) The employer discharged claimant for installing the wrong oil filter.

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. 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 for installing the wrong oil filter on a customer's vehicle. However, the record fails to show claimant willfully installed the wrong oil filter or *consciously* engaged in other conduct that he knew or should have would probably result in his failure to install the correct oil filter. The record instead shows that claimant followed the employer's procedures for pulling and installing the correct oil filter, but likely erred when entering the vehicle information into the employer's computer system, reading or writing down the part number, or reading the number on the part he pulled. Claimant may have been careless, arguably negligent, but his conduct did not rise to the level of *wanton* negligence as defined under OAR 471-030-0038(1)(c).

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

DECISION: Hearing Decision 16-UI-71654 is affirmed.

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

DATE of Service: January 13, 2017

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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