

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0261

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 134642). The employer filed a timely request for hearing. On February 8, 2017, ALJ M. Davis conducted a hearing, and on February 8, 2017, issued Hearing Decision 17-UI-76497, affirming the administrative decision. On February 28, 2017, 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. Even if we had considered the employer's argument, however, it would not have changed the outcome of this decision.

Under ORS 657.176(2)(a), an individual is disqualified from the receipt of unemployment benefits if the employer discharged the individual for misconduct, which is defined, 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(3)(a) (August 3, 2011). Among the exceptions to misconduct is mere inefficiency resulting from lack of job skills or experience. OAR 471-030-0038(3)(b).

In its argument, the employer explained that it discharged claimant because even though it provided her "with every tool necessary to perform, with multiple chances to provide that she understood what was expected," claimant "failed to show any improvement or competence in performing her tasks, resulting in frustrated clientele and loss of business." The employer's argument clearly indicates that claimant's discharge resulted from inefficiency caused by her lack of skill in performing the tasks assigned to her -- conduct which is not misconduct.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 17-UI-76497 is affirmed.

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

DATE of Service: March 20, 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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