

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0382

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 81401). The employer filed a timely request for hearing. On March 23, 2017, ALJ Lewis conducted a hearing, and on March 29, 2017 issued Hearing Decision 17-UI-79876, affirming the Department's decision. On March 31, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) St. Charles Health System Inc. employed claimant as a patient access coordinator from March 18, 1991 to November 22, 2016.

(2) The employer's employee handbook contained an "Arrest or Conviction Policy" stating that an employee who was arrested for a felony or misdemeanor other than a minor driving offense was required to notify the employee's supervisor of such arrest by the next business day or no later than 48 hours after the arrest. Exhibit 1. Claimant received a copy of the employee handbook, but had never been arrested for a felony or misdemeanor, and therefore did not read the Arrest or Conviction policy. On August 19, 2016, claimant took a "lesson" on the employee handbook, but the lesson did not include a discussion of the policy. Transcript at 34-35. Claimant worked for the employer for over 25 years and was unaware of any employee having been arrested for a felony or misdemeanor, having failed to notify the employee's supervisor of such an arrest, or having been disciplined for failing to do so. Claimant therefore did not understand or know that if she was arrested for a felony or misdemeanor, she was expected to notify her supervisor by the next business day or no later than 48 hours.

(3) At approximately 11:00 p.m. on Saturday, November 19, 2016, claimant was arrested for attempted burglary and incarcerated until approximately 5:00 p.m. on Monday, November 21, 2016. Claimant did not notify the employer that she had been arrested because she did not know or understand she was expected to do so.

(4) On November 22, 2016, the employer discharged claimant for failing to notify her supervisor of her arrest by November 21, 2016.

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. 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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for violating its Arrest or Conviction Policy contained in its employee handbook, which stated an employee who was arrested for a felony or misdemeanor other than a minor driving offense was required to notify the employee's supervisor of such arrest by the next business day or no later than 48 hours after the incident. Claimant received a copy of the employee handbook, and therefore should have known she was required to notify her supervisor of her November 19, 2016 arrest for attempted burglary by November 21, 2016. However, the record shows that claimant did not know she was required to notify her supervisor by November 21, and therefore did not consciously neglect to do so. Claimant's failure to notify her supervisor was the result of a good faith error in her understanding of the employer's expectations. Good faith errors are not misconduct.

DECISION: Hearing Decision 17-UI-79876 is affirmed.

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

DATE of Service: April 25, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.