

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0460

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144230). Claimant filed a timely request for hearing. On April 12, 2017, ALJ Amesbury conducted a hearing, and on April 14, 2017 issued Hearing Decision 17-UI-80977, concluding claimant's discharge was not for misconduct. On April 21, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Peace Health Medical Group employed claimant from November 4, 2013 to February 22, 2017.

(2) Claimant initially worked for the employer as a crisis worker in the emergency department. In that position and department, the employer did not require claimant to obtain or handle patients' authorization for release of information forms.

(3) Claimant transferred to a position in the behavioral health unit, where she worked as a certified social work assistant. Certified social work assistants had some professional training, but were still in their first two years of working toward becoming licensed clinical social workers.

(4) The employer did not train or educate its behavioral health unit workers about its expectations with respect to retention of patients' authorization for release of information forms. The employer did not have any particular rule, policy or process governing retention of that form. The employer expected that "a professional person has went through the appropriate training when they're hired to understand [rules] around maintaining medical records." Transcript at 18.

(5) Claimant did not have any professional education or training regarding the retention of patients' release forms. Claimant thought perhaps the forms should be scanned into the employer's electronic medical record system, but sometime prior to February 2016 she and a supervisor looked for electronic copies of release forms and did not find any. Claimant did not know what use scanning the documents

would have if the employer did not retain them. She did not want to keep the forms at her desk because her desk did not lock and she thought keeping the forms without securing them would likely violate patients' confidentiality, and did not know what else to do with the forms. Claimant began routinely shredding the forms along with other items she had been trained she did not need to retain.

(6) Between May 2016 and February 2017, claimant and her coworkers repeatedly asked supervisors and someone from the employer's organizational integrity department for guidance about patient confidentiality and retention of release forms but received no answers. There was no uniform process for handling patients' release forms; although some employees had the ward clerk send authorization for release of information forms to medical records, some without knowing whether or not they would be scanned into patients' medical records, other employees shredded or recycled the forms.

(7) In February 2017, the employer investigated a concern that claimant had released information about a patient to the patient's foster parents without the patient's authorization. During that process, claimant said she had obtained a signed release form from that patient but had since shredded it. On February 22, 2017, the employer discharged claimant for failing to retain release forms.

(8) Since claimant's discharge, the employer has had a group of people "working on a process" regarding retention of patients' authorizations for release of information. Transcript at 29. The employer also made it "very clear" to behavioral health workers that the employer expects them to have release forms scanned into patients' medical records. Transcript at 69.

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.

The employer expected claimant to retain patients' release forms and claimant violated that expectation, apparently as a matter of regular practice. In order for claimant's violation to constitute disqualifying misconduct, however, the employer must prove that claimant violated the expectation willfully or with wanton negligence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). In this case, the employer did not meet that burden. Claimant did not receive any professional training about retention of release forms. Claimant's unit supervisor testified that the employer did not train or educate employees about retaining the release form, and did not have any rules, policies or procedures on that topic. A long-term employee testified that she had "just kind of figured" out to keep the forms, did not learn what the employer did with the forms until December 2016, and only kept the forms to "cover my ass." Transcript at 70, 74. That same employee knew employees other than just claimant also discarded

release forms rather than having them scanned into patients' medical records, and there was no uniform practice with regard to the forms among behavioral health workers. The preponderance of the evidence in this record therefore suggests that claimant neither knew, nor had reason to know as a matter of professional training, company culture or common sense, what the employer expected her to do with patients' release forms. As such, her violation of the employer's expectation by shredding those forms was not done willfully or with wanton negligence, and her discharge was not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-80977 is affirmed.

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

DATE of Service: May 10, 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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