

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0462

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114729). Claimant filed a timely request for hearing. On March 29, 2017, ALJ Wyatt conducted a hearing, and on April 7, 2017 issued Hearing Decision 17-UI-80526, affirming the Department's decision. On April 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered claimant's argument only to the extent it was based on information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Bay Area Hospital employed claimant as a patient admission specialist until December 27, 2016.

(2) The employer expected claimant to be honest in work-related matters. Claimant understood the expectation.

(3) On December 5, 2016, claimant completed a patient's in-room registration during evening hours. During the afternoon of December 6, 2016, claimant completed the same patient's "quick registration" and placed an armband on the patient. The patient subsequently complained to the employer that claimant had accessed his information without first asking for his identification or date of birth when she completed his registration on December 6th, and he was concerned about the security and confidentiality of his records.

(4) On December 13, 2016, the employer questioned claimant about her interaction with the patient who had complained about her. At the time, the employer did not yet know that claimant had interacted with

the patient on two occasions. Claimant recalled only her December 5th interaction with the patient, and admitted that she had seen the patient and done an in-room registration but did not recall having completed the patient's "quick registration" and denied having done so. Claimant felt confused about the questioning as she only recalled the events of December 5th; the employer did not realize until near the end of the interview that claimant had seen the patient on both December 5th and December 6th.

(5) Between December 13, 2016 and December 27, 2016, the employer viewed surveillance video that showed claimant had completed the patient's registration on December 6th and placed an armband on the patient. On December 27, 2016, the employer interviewed claimant again and claimant again denied registering the patient on December 6th. The employer showed claimant the surveillance video. Claimant saw herself on the video registering the patient and therefore knew she had "quick registered" the patient, but continued to lack personal recall of the event. Claimant also realized that she had been mistaken about which other staff members she had worked with that day and that all she recalled with any accuracy about her shift on December 6th was that it was a "crazy" and "very busy" day, and that the patient who had complained about her had been "cussing" at another employee because he felt it was taking too long to receive service. Transcript at 26, 27, 28, 31. Claimant did not recall any other details from that shift.

(6) The employer concluded that claimant had been dishonest on December 13th and December 27th by denying having registered the patient on December 6th. On December 27, 2016, the employer discharged claimant for dishonesty.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude 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.

The ALJ concluded that claimant's discharge was for misconduct because, "[m]ore likely than not, claimant knew she was providing false responses to the employer at the meetings on December 13, 2016, and December 27, 2016." Hearing Decision 17-UI-80526 at 4. The ALJ reasoned that, although claimant claimed she denied helping the patient on December 6th because she lacked recall, her claim was not persuasive because she had interacted with the patient's spouse the previous evening, took information from the spouse on December 6th, and "may have been motivated to deny" registering the patient on December 6th "because the original purpose of the December 13, 2016 investigatory meeting was to investigate a possible HIPAA violation." *Id.* We disagree.

It is not implausible that claimant might lack personal recall of events that occurred on December 6th. Not only had she seen the same patient, and the patient's spouse, during two consecutive shifts, the December 6th shift was "crazy" and "very busy," her "quick registration" of the patient was apparently a routine task she performed frequently during her shifts, she was being questioned about them one and three weeks after-the-fact, and she had a far more memorable impression of that patient "cussing" at another staff person on December 6th. That claimant's claim that she lacked personal recall of

completing that patient's "quick registration" was sincere is further supported by claimant's inability to recall other details from that shift, such as which other staff members she worked with during that shift. The ALJ's inference that claimant was motivated to lie about her December 6th conduct during her December 13th questioning is not a reasonable inference, given that the employer did not specify during that interview that claimant was being asked about her activities during her December 6th shift, claimant thought she was being asked about December 5th, and the employer did not even become aware that claimant had helped the same patient during two consecutive shifts until the end of the meeting. Moreover, when asked by the ALJ if the employer was aware of any reason claimant "would have decided to be dishonest" about whether she registered that patient, the employer's witness responded, "No." Transcript at 13.

There is no dispute on this record that claimant failed to accurately respond to the employer's questions about her activities with respect to the December 6th patient when asked about those activities on both December 13th and December 27th. However, it is more likely than not that she did not accurately respond to questions on December 13th because she did not know the employer was asking about her activities on December 6th, and it is more likely than not that she did not accurately respond to the employer's questions on December 27th because she lacked personal recall of her activities even after viewing surveillance video showing her activities. The preponderance of the evidence on this record therefore fails to establish that claimant's inaccurate responses to the employer's questions were motivated by willful or wantonly negligent dishonesty; they were, rather, the result of claimant's lack of personal recall of the events in question.

Claimant's discharge was not for misconduct. She is not subject to disqualification from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 17-UI-80526 is set aside, as outlined above.¹

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

DATE of Service: May 12, 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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits, if owed, may take from several days to two weeks for the Department to complete.