

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0470

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 125122). Claimant filed a timely request for hearing. On April 3, 2017, ALJ Amesbury conducted a hearing, and on April 6, 2017, issued Hearing Decision 17-UI-80444, concluding that the employer discharged claimant, but not for misconduct. On April 21, 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). We therefore considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Weyerhaeuser employed claimant as a back hoe operator from May 3, 2005 until September 23, 2016.

(2) The employer expected claimant to accurately record time worked on the time sheets he was required to keep. Claimant knew about and understood the employer's expectation concerning his time sheets.

(3) In September 2016, claimant was scheduled to work from 5 a.m. to 1 p.m., Monday through Friday. Although claimant began and ended his shift at the employer's office building, the actual work time for which he was paid began when he reached the forest, where he performed his job duties. Audio recording at 21:19.

(4) On September 13, 2016, claimant and his coworkers were moving fire trucks and equipment at their work site in the forest. At approximately 11 a.m., claimant took a coworker back to the employer's office, so the coworker could pick up his dump truck. Claimant then returned to the forest and worked the remainder of his shift. He recorded on his time sheet that he had worked his entire shift on September 13.

(5) On September 14 and 15, 2016, left work early. He mistakenly recorded on his time sheet that he worked his entire shifts on those dates, however.

(6) After reviewing computer records showing when claimant had used his badge to enter the employer's office building, claimant's supervisor concluded claimant entered false information regarding hours worked on September 14 and 15 on his time sheets. Based on information from a coworker, who said that claimant left work early on September 13, the supervisor concluded that claimant had also entered false information regarding his work hours on that date.

(7) On September 23, 2016, the employer discharged claimant for falsely claiming he had worked his entire shifts on September 13, 14, and 15, 2016 when had not done so. The employer concluded that by allegedly claiming hours he had not worked, claimant was "stealing" from the employer. Audio recording at 39:57.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that the employer discharged claimant, but 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b). The employer carries the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because it concluded that he entered false information on his time sheets by claiming he had worked his full shifts on September 13, 14, and 15, 2016 when he had not done so. Claimant knew about and understood the employer's expectation that he correctly enter time worked on his time sheets. In regard to the entries regarding hours worked on September 14 and 15, claimant testified that his entries resulted from a mistake, and not from any deliberate attempt to claim time worked that he had not actually worked. Claimant's error in recording his time, which was made in good faith, is not misconduct. OAR 471-030-0038(3)(b).

In regard to claimant's alleged falsification of his time sheet entry for September 13, claimant and the employer presented differing accounts of what occurred. Claimant's supervisor testified that a coworker witnessed claimant leaving work early. Claimant, however, asserted that about two hours before his work shift was scheduled to end, he left the location where he was working in the forest to take a coworker to the employer's office building; he then returned to the forest and worked the rest of his shift. Claimant's first-hand account of what he did on September 13 has greater weight than the employer's hearsay evidence. The employer therefore failed to meet its burden to show that claimant made a false entry on his time sheet regarding the hours he worked on September 13.

The employer discharged claimant, but not for misconduct. He is not disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-80444 is affirmed.

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

DATE of Service: May 9, 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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