

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0642

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144746). Claimant filed a timely request for hearing. On May 11, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-83134, concluding the employer discharged claimant, but not for misconduct. On May 25, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) R. Tyson Scott DPM, LLC, a podiatry office, employed claimant from January 4, 2016 to February 21, 2017 as a medical biller.

(2) Until February 2016, the employer had outsourced its medical billing. Beginning on February 17, 2016, the employer began in-house medical billing and assigned claimant to be the primary biller, using new medical billing software. Claimant had fifteen years of medical billing experience, but had no experience using the employer's particular software. The employer provided claimant with 20 hours of online training on the software in January and February 2016 and expected claimant to complete all its billing accurately and in a timely manner. Claimant understood the employer's expectations as a matter of common sense.

(3) Used properly, the employer's new software integrated the employer's health records and billing. There were reports that the employer expected claimant to generate using the billing software before the employer could bill for services. Before the reports were generated, the doctors had to sign medical charts so the charts in were in final format and were included in the reports. Between February 2016 and February 2017, there were a significant number of charts that remained unsigned, and as a result, the services were not billed. Claimant never saw a large number of unsigned charts and did not know some charts were not processed for billing.

(4) In July 2016, the employer hired a second biller. Claimant worked Tuesdays through Fridays. The second biller worked on Mondays, too. The second biller had more experience than claimant using the employer's new billing software because she had used it in the past.

(5) In early February 2017, the employer's doctors asked claimant if she was certain the employer had billed all its services. Claimant assured the doctors that there were no problems and that patients had been billed properly. On Friday, February 17, 2017, the employer's other biller, "out of a fluke," ran a report using the new software that showed "hundreds" of patient services that were not billed from February 23, 2016 to February 17, 2017. Audio Record at 13:27 to 14:06. The unbilled amount totaled more than \$40,000. The employer could no longer bill some of that amount because claims had not been timely filed with insurance companies.

(6) The employer asked claimant about the services that not been billed. Claimant explained that the medical charts that were never signed remained in "draft mode" and were not included in the reports she had regularly used to transfer information from medical charts to billing, and that ensuring that the doctors signed the charts was not one of her duties. Audio Record at 14:18 to 14:44. The employer was displeased that claimant did not accept full responsibility for the missed billings.

(7) Claimant did not report to work on Monday, February 20, 2017, because she did not normally work on Mondays and provided daycare for a grandchild on Mondays. The employer did not direct claimant to report to work on February 20.

(8) Claimant had received no written warnings or otherwise been disciplined by the employer before February 21, 2017. Claimant received positive performance reviews throughout her employment.

(9) On February 21, 2017, the employer discharged claimant because she failed to bill for more than \$40,000 in services from February 23, 2016 to February 17, 2017, causing a loss to the employer.

CONCLUSIONS AND REASONS: 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. 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 bears the burden to prove misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant for failing to bill multiple patient services from February 2016 to February 2017. There is no dispute that during the one year claimant used the employer's new billing software, she failed to bill for services totaling more than \$40,000, which constituted a violation of the employer's reasonable expectation that claimant complete all the billing in a timely manner. In order for

the failure to bill to be attributable to claimant as misconduct, though, the record must show that it is more likely than not that claimant acted willfully, or with indifference to the consequences of her acts or failures to act, with respect to ensuring that she completed all the billing.

The employer's office manager asserted at hearing that claimant was trained how to use the employer's new software and used it daily, and was the only person who knew that the report generated on February 17, 2017, showing the services from unsigned charts, needed to be generated for billing purposes. The employer's office manager also testified that the employer decided to discharge claimant for the billing errors rather than a lesser form of discipline because claimant did not accept responsibility for the errors and did not report to work on Monday, February 20 to assist with completing the missed billings. Audio Record at 14:55 to 15:38. The employer did not assert, and the record does not show, that claimant intentionally failed to bill all the employer's services. The issue is whether the record shows claimant consciously made inadequate efforts to prevent such a large lapse in billing. The record shows that although claimant had substantial billing experience, she was new both the employer's office and to the software she began using in February 2016. There is no evidence to show that claimant knew or should have known from her prior experience or training that the report generated on February 17, 2017 was necessary to process all the employer's services for billing. Notable too was that the other biller, who had experience with the software, did not know that the billers needed to complete the report, and only generated it by a "fluke." Moreover, even though the missed billings were for a large amount of money, claimant did not see large numbers of unsigned charts and the record does not show there were warning signs that there were services provided that had not been billed. Nor did claimant's failure to report to work on February 20 show that she was indifferent to the consequences of her actions. Claimant did not work on Mondays, and the employer did not ask her to work on February 20. Because the record fails to show that claimant knew or should have known that she needed to run one type of report to bill all of the employer's services, or that she should have otherwise known she had failed to bill for services, claimant's failure to do so was not willful or wantonly negligent, and therefore was not misconduct.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 17-UI-83134 is affirmed.

DATE of Service: June 19, 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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