

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0915

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 145040). The claimant filed a timely request for hearing. On July 24, 2017, ALJ Seideman conducted a hearing, and on July 25, 2017 issued Hearing Decision 17-UI-88833, affirming the Department's decision. On July 29, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Aداugeo Healthcare Solutions, LLC, a healthcare administrator and bookkeeper, employed claimant from November 19, 2015 to May 17, 2017 as a charge entry specialist.

(2) The employer expected claimant to spend the time she was logged into the employer's system inputting charges from providers' lists of pending charges for services the providers provided. The employer's system created a record for each patient record claimant accessed and each charge claimant posted. Claimant had to access patient charts to perform her work. Each time she did so, the employer's system created a record of claimant's activity. The employer expected claimant to post at least two charges per minute while she was working.

(3) On May 15, 2017, in response to an inquiry from a provider, one of the employer's billing managers reviewed the charges claimant posted on May 15. The billing manager saw that during 8.7 hours of paid work time, claimant had 5.5 hours of inactivity where claimant had not accessed any patient records or posted any charges. Exhibit 5. The billing manager spoke with claimant by telephone and claimant had no explanation for the period of inactivity while she was logged in to work. As a result, the billing manager reviewed a two-week period of claimant's timekeeping, from May 1 through May 15, 2017.

(4) The billing manager found that for every day of the two weeks she reviewed, there were periods of inactive time that claimant was logged into the system and paid, but did not post any charges or access patient records. On May 1, 2017, during 9.94 hours of paid work time, claimant had 7.5 hours of inactivity. Exhibit 7, 5. On May 2, 2017, during 10.71 hours of paid work time, claimant had 8 hours of

inactivity. Exhibit 5. On May 3, 2017, during 8.85 hours of paid work time, claimant had 5.25 hours of inactivity. *Id.* On May 4, 2017, during 7.38 hours of paid work time, claimant had 6 hours of inactivity. *Id.* On May 5, 2017, during 8.19 hours of paid work time, claimant had 7 hours of inactivity. *Id.* On May 8, 2017, during 8.21 hours of paid work time, claimant had 4.25 hours of inactivity. *Id.* On May 9, 2017, during 6.75 hours of paid work time, claimant had 3.5 hours of inactivity. *Id.* On May 10, 2017, during 8.21 hours of paid work time, claimant had 6.75 hours of inactivity. *Id.* On May 11, 2017, during 8.95 hours of paid work time, claimant had 7.75 hours of inactivity. *Id.* On May 12, 2017, during 9.48 hours of paid work time, claimant had 8.5 hours of inactivity. *Id.* For the period May 1 through May 15, 2017, claimant had a total of 70 inactive hours and 25.37 hours of work activity while she was logged in for paid work time.

(5) On May 11, 2017, claimant was ill but forgot to log out of the employer's system. In addition to posting charges, claimant sometimes spent time waiting for responses to emails she had sent to providers or doing research by looking at patients' charts. When claimant accessed patients' charts for research, the employer's system created a record of that activity.

(6) The billing manager tried to contact claimant again by telephone after she investigated claimant's timekeeping from May 1 through May 15, but claimant did not return her telephone calls regarding that issue.

(7) Claimant had no warnings before the employer discovered the timekeeping issue on May 15, 2017.

(8) On May 16, 2017, by email, claimant sent the employer a letter resigning effective May 31, 2017.

(9) On May 17, 2017, the employer discharged claimant for failing to work during paid work time.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude the employer discharged claimant 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. 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). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for failing to work during paid work time when she was logged into the employer's system. Claimant provided a plausible explanation for May 11, 2017, when she was sick but forgot to log out of the system. However, claimant had ten other days with periods of inactivity totaling 62.25 hours. Claimant asserted that some of the "inactive" time was time spent waiting for email responses from clients, and researching patient charts. Transcript at 17, 26. Claimant's assertion is not plausible because it cannot account for the many hours of inactivity during paid work time and because time claimant spent accessing patient charts for research was already considered to be "active" work time by the employer. In failing to log out of the system, thereby being paid for significant periods

of time she was not working, claimant consciously engaged in conduct she knew or should have known as a matter of common sense violated the employer's expectations regarding timekeeping, and therefore willfully violated its expectations in that regard.

Claimant did not assert that the employer's record of her work activities was incorrect, but did argue that that the employer should look at her past "good standing" with the employer and give her "a chance to improve [her] error." Transcript at 18. Claimant essentially argues that the timekeeping should be excused as an isolated instance of poor judgment. However, claimant's conduct cannot be excused as an isolated instance of poor judgment. For an act to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Moreover, acts that create irreparable breaches of trust in the employment relationship make a continued relationship impossible, exceed mere poor judgment, and do not fall within the exculpatory provisions of OAR 471-030-0038(3). In the present case, with the exception of May 11, claimant violated the employer's timekeeping expectations daily from May 1 through May 15, so her conduct was a repeated act and a pattern of willful violations, and not a single or infrequent occurrence. In addition, claimant's willful failure to honestly represent her work time, viewed objectively, was sufficient to create an irreparable breach of trust in the employment relationship that made a continued relationship impossible. Claimant's acts therefore exceeded mere poor judgment, and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

Nor can claimant's conduct be excused as a good faith error. It is not plausible that claimant mistakenly believed that the employer would condone her failure to log out of the employer's system where it caused the employer to pay claimant for more than 60 hours that she was not working during a two-week period.

The employer discharged claimant for misconduct.¹ Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 17-UI-88833 is affirmed.

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

DATE of Service: August 16, 2017

¹ ORS 657.176(8) provides that when an individual has notified an employer that she will quit work on a specific date, and the employer then discharges her, *not for misconduct*, no more than fifteen days prior to that date, and the quit would have been without good cause, the work separation is adjudicated as if the discharge had not occurred and the planned quit had occurred, and the individual is disqualified from receiving benefits, except that she is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned quit date.

Claimant notified the employer she would end her employment on May 31, 2017. The employer discharged claimant May 17, 2017, less than 15 days prior to claimant's planned quit date. However, because the employer discharged claimant *for misconduct*, it is not necessary to determine whether claimant's planned quit would have been with or without good cause because ORS 657.176(8) does not apply to this case.

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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