

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1053

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 74541). Claimant filed a timely request for hearing. On August 18, 2017, ALJ Shoemake conducted a hearing, and on August 22, 2017 issued Hearing Decision 17-UI-90837, affirming the Department's decision. On September 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Columbia Care Services, Inc. employed claimant from March 20, 2015 until June 24, 2017 as a qualified mental health professional (QMHP).

(2) Claimant's primary duty was to administer medication in a care facility to the employer's clients, who are chronically mentally ill. The employer expected claimant to follow all doctor's orders. Failing to follow the doctor's orders and putting a client's health at risk was grounds for discharge. Claimant understood the employer's expectations.

(3) On June 10, 2017, claimant was training a new employee to give medication to clients. For one client, the doctor had ordered that he be given blood pressure medication only after having his blood pressure checked to verify that it fell within the parameters detailed in the orders. Claimant knew and understood the doctor's orders. Claimant told the new employee that she was not to give the medication before checking the client's blood pressure. Claimant then told the new employee, "Don't do this. Don't do this, . . . [b]ut it's okay, because it's always high," and gave the client blood pressure medication without checking his blood pressure first. Transcript at 19.

(4) On about June 23, 2017, the employer's administrator learned about the June 10 blood pressure medication incident. On June 24, 2017, she asked claimant if she had given the client blood pressure medication without checking his blood pressure first, and claimant told the administrator she knew she was supposed to check the client's blood pressure first, but "it was okay that she didn't because it was

always high.” Transcript at 8-9. The administrator’s review of the client’s medical records showed that his blood pressure was not “always high.”

(5) On June 24, 2017, the employer discharged claimant for knowingly failing to follow doctor’s orders and risking harm to a client.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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. 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. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). An act is isolated if the exercise of poor judgment is 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). Isolated acts exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3) if they violate the law, are tantamount to unlawful conduct, create irreparable breaches of trust in the employment relationship, or otherwise make a continued employment relationship impossible. OAR 471-030-0038(1)(d)(D).

The employer discharged claimant because she knowingly disregarded the doctor’s orders and administered medication to a client before checking the client’s blood pressure. Claimant asserted that she did not risk the client’s health because she assumed his blood pressure was high because “it’s always high.” Transcript at 21. Claimant asserted that she assumed he required the medication because he was “talking, walking, laughing, smoking, doing all of what he always does,” and that she had experience knowing his blood pressure levels over more than two years. Transcript at 23. Claimant’s assertion is unreasoned, and she acknowledged that she did not know the client’s blood pressure would be within the parameters requiring medication when she gave it to him. Transcript at 23. Moreover there is no evidence to show that the employer provided an exception to following the doctor’s orders when a QMHP believed, based on her experience instead of the doctor’s, that she was permitted to disregard the doctor’s orders. Claimant asserted that she may have disregarded the doctor’s orders due to “lack of staffing” or “distraction.” Transcript at 20. These arguments are equally implausible because claimant did not show that there was a lack of staffing, or that her conduct was due to being distracted. Given claimant’s comments to the new employee, instructing her not to follow claimant’s example, we conclude that claimant willfully disregarded the employer’s expectation that she follow the doctor’s orders.

The record does not show that claimant's conduct was more than an isolated instance. However, certain acts exceed mere poor judgment and are thus not excusable as isolated instances of poor judgment. The employer has identified an employee's failure to follow doctor's orders and causing risk to a client as cause for immediate discharge, and viewed objectively, claimant's conduct was so egregious that it created an irreparable breach of trust in the employment relationship. That claimant violated the employer's policy while training a new employee only exacerbates the seriousness of claimant's conduct. We therefore conclude that claimant's conduct on June 10 exceeded mere poor judgment and is not excused under OAR 471-030-0038(3)(b). Nor was claimant's behavior excused from constituting misconduct as a good faith error under OAR 471-030-0038(3)(b). There is no evidence to show that claimant had a good faith belief that the employer condoned her conduct. Because claimant willfully violated the employer's standards and her behavior is not excused on any ground, claimant engaged in misconduct and is disqualified from benefits.

DECISION: Hearing Decision 17-UI-90837 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 3, 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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