

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1124

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 160051). Claimant filed a timely request for hearing. On September 5, 2017, ALJ Meerdink conducted a hearing, and on September 7, 2017 issued Hearing Decision 17-UI-92105, affirming the Department’s decision. On September 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Corvallis Pain Management employed claimant from September 19, 2016 until July 18, 2017, last as a referral coordinator in the new patient scheduling department.

(2) The employer expected claimant to perform her work duties, including scheduling new patients, completing new patients’ referrals and insurance authorizations, and completing new patient packets, and to refrain from delegating her work to her coworkers without the employer’s permission.

(3) At the beginning of June 2017, the employer promoted claimant from a front desk position, for which her duties included scheduling new patients and completing referrals, to a referral coordinator position for which her duties included completing insurance authorization in addition to her existing scheduling and referral duties. The employer had not provided claimant with training about completing referrals, and claimant was concerned about completing her existing duties and her new insurance authorization duties without assistance until she had more experience. Based on conversations claimant had with the office manager at the time she was promoted, claimant believed the employer permitted her to ask the front desk staff to help schedule new patients, and a medical scribe coworker to help complete referrals.

(4) The employer’s employees have a “chat group” where they can communicate with each other via the internet. In June 2017, after her promotion, claimant sent a message to the medical scribe in the chat stating, “Let the front desk know they do new patient scheduling.” Audio Record at 8:39 to 8:59. On June 7, 2017, claimant sent an email to the employer’s office manager and assistant manager stating that she was confirming that she had given new patient scheduling duties to the front desk “as per my

conversation when [insurance authorizations] were passed to me. . . . If you want me to continue to deal with new patients and things like this . . . we need to have a conversation about it.” Audio Record at 29:53 to 30:26. Claimant requested a meeting with the office manager to discuss the scope of her job duties.

(5) On June 12, 2017, the employer’s office manager and claimant met and discussed claimant’s job duties. Claimant told the office manager that she had stopped doing new patient scheduling when she was promoted to the referral coordination position, but would be “taking over new patient scheduling again.” Audio Record at 18:56 to 19:15.

(6) On June 19, 2017, claimant sent the assistant office manager an email stating that claimant had noticed the office had not been scheduling new patients and that claimant would “try [her] best to make the time to [schedule new patients].” Claimant also stated that she needed recent schedule information because “[she had] not been scheduling lately.” Audio Record at 21:36 to 22:02.

(7) On July 17, 2017, the employer learned that claimant had given the front desk some of the employer’s new patient packets to complete. The employer gave claimant a written warning for giving the duty to the reception desk rather than completing the packets herself.

(8) On July 18, 2017, the employer discharged claimant because she gave some of the new patient packets to the front desk to complete without first obtaining the employer’s authority to do so.

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. 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 she gave her job duty of completing new patient packets to other staff to complete, allegedly without the employer’s permission. The ALJ found facts in favor of the employer’s testimony that it did not give claimant permission to delegate work to her coworkers.¹ Based on those findings, the ALJ concluded that claimant’s conduct of passing her work duties to other employees was misconduct because it was wantonly negligent, and was not isolated or based on a genuine belief that the employer permitted her to give work to other employees. We disagree.

¹ Hearing Decision 17-UI-92105 at 1.

The employer reasonably expected claimant to refrain from assigning her work duties to her coworkers without the employer's permission. Claimant knew or should have known that expectation as a matter of common sense. The employer's office manager testified that she told claimant on June 12 that claimant was "still responsible" for completing referrals and new patient scheduling in addition to insurance authorizations. Audio Record at 29:31 to 29:52. However, claimant testified that the office manager gave her permission to share new patient duties, including scheduling and completing new patient packets, with the front desk staff when she was promoted to the referral coordinator position, and that the office manager did not tell her at the June 12 meeting that she was exclusively responsible for those duties going forward. Audio Record at 19:43 to 22:23. Moreover, claimant testified that she told the office manager the medical scribe would be assisting with completing referrals, and the office manager did not object to it. Audio Record at 34:30 to 34:37.

We find no basis in the record for the ALJ's implicit determination that claimant was not a credible witness, and find the preponderance of the evidence shows that claimant reasonably believed that the employer permitted her to delegate some of her new patient duties, including completing the new patient packets, to the front desk because she acknowledged to the employer that she had allocated work to the front desk during and after the June 12 meeting, and the balance of the evidence does not show that the employer told her to stop, or admonished her for doing so. For example, claimant referred to the conversation giving her permission to delegate new patient duties to other staff in an email to the assistant manager on June 7. On June 12, claimant told the office manager that she would be "taking over" new patient scheduling *again*. On June 19, claimant told the assistant manager in an email that she would "make the time" to do new patient scheduling, and needed additional information because "[she had] not been scheduling lately." Emphasis added; Audio Record at 18:56 to 20:06, 21:36 to 22:02. The record does not show by a preponderance of the evidence that the employer responded to those communications by telling claimant that she alone was responsible for new patient duties. Moreover, although the employer characterized the June 12 discussion as a verbal warning to claimant for having given work to the front desk, the record does not show the purpose of that meeting was disciplinary in nature because claimant initiated the meeting herself to discuss her job duties with the office manager. In sum, the employer failed to show by a preponderance of evidence that claimant knew or should have known she was not authorized to delegate some of her work while she transitioned to the referral coordinator position. Absent such a showing, the employer failed to establish that claimant's act of giving new patient packets to the front desk was misconduct, and not a good faith error.

The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-92105 is set aside, as outlined above.²

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

DATE of Service: October 17, 2017

² 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.

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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