

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1133

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 154820). Claimant filed a timely request for hearing. On September 12, 2017, ALJ S. Lee conducted a hearing, and on September 14, 2017 issued Hearing Decision 17-UI-92714, concluding the employer discharged claimant, not for misconduct, within 15 days of a planned voluntary leaving without good cause. On September 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Brown – Brown, Inc. employed claimant as a personal lines account manager from February 1, 2016 to June 19, 2017.

(2) In March 2017 claimant began working to transfer from the employer’s Bend, Oregon office to its Phoenix, Arizona office. Claimant wanted to continue working in Bend until she moved; she discussed leaving the Bend office with human resources and said she was willing to work through July 2017. The human resources person told claimant how to prepare a resignation letter and assured her she could continue to work after submitting it.

(3) On June 5, 2017, claimant emailed a letter to the employer that said, “due to changes in my personal life I will be moving to Arizona and hope to transfer with Brown & Brown Insurance in Arizona. This will be in July 2017.” Transcript at 6. Claimant requested to use a paid time off day July 3rd. The employer concluded that claimant wanted to work until the end of June and leave work thereafter.

(4) After sending the letter, claimant worked through the end of that week. From June 12th through June 16th, claimant was absent due to illness and notified the employer of her absences via text messages in accordance with her normal practice. During claimant’s absence, the employer packed her belongings and stationed someone else at that desk.

(5) On June 19, 2017, claimant returned to work, went to her office, and found her packed belongings. When the vice president of operations arrived she “said that we did accept her [claimant’s] resignation through the end of the month and that we would honor that with payroll.” *Id.* The employer had planned to let claimant work until she moved, “but then it just didn’t make sense, and – but we wanted to honor the payroll anyway.” Transcript at 11. At that time, claimant had not been successful in transferring to the employer’s Arizona office.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that the employer discharged claimant, not for misconduct.

The ALJ applied ORS 657.176(8) to this case and concluded that the employer discharged claimant, not for misconduct, within 15 days of her planned voluntary leaving without good cause and was disqualified from benefits based upon her voluntary leaving. The ALJ reasoned that although “[t]he testimony was heavily disputed regarding when claimant’s intended resignation date was” the ALJ “was persuaded . . . that claimant’s resignation was set to be effective at the end of June 2017,” and since the employer notified claimant on June 19th that she was no longer needed, “the employer accelerated claimant’s leaving within 15 days of her planned quit date, but not for misconduct.” Hearing Decision 17-UI-92714 at 3-4. We disagree.

ORS 657.176(8) only applies “when an individual has notified an employer that the individual will leave work on a specific date.” The word “specific means “clearly defined or identified.”¹ The word “date,” as commonly used, means “the day of the month or year as specified by a number.”² Claimant discussed and stated in her letter that her move to Arizona would happen “in July”; the employer suggested that claimant said she planned to work “through June” and wanted to use an accrued leave day in July. *Compare* Transcript at 5; Transcript at 6. In other words, not only was “the testimony was heavily disputed” about claimant’s resignation date, in our view the record fails to show that claimant ever gave the employer a clearly identified day of the month as specified by a number upon which she planned to leave work. Therefore, she did not provide “a specific date” that she would leave work, and ORS 657.176(8) does not apply to this situation.

The nature of the work separation remains in dispute. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

In this case, claimant submitted a letter to the employer stating that she wanted to transfer to the employer’s Arizona office, which would, logically, necessitate she stop working at the Bend, Oregon office. “Work” is defined as “the continuing relationship between an employer and employee.” OAR 471-030-0038(1)(a). Whether an individual “could have continued to work” or was not allowed to “work” therefore depends on whether and when the employment relationship stopped entirely, and not

¹ <https://en.oxforddictionaries.com/definition/specific>

² <https://en.oxforddictionaries.com/definition/date>

whether an individual is transferred to a different assignment with the same employer. Claimant's letter, although referred to as a "resignation" letter, did not state that she wanted to resign or end the employment relationship, merely that she intended to transfer jobs within the company. Therefore, although claimant's letter precipitated and perhaps even caused the ultimate work separation to occur, on this record it does not appear that claimant's letter was a "resignation," and there is not a date upon which claimant established she was unwilling to continue working for the employer at a time when continuing work was available.

The first unequivocal indication that the employment relationship had ended occurred on June 19th when claimant reported to the workplace for her regularly scheduled shift, found that her belongings had been packed and someone else assigned to her office, and was then told by the employer that her services were no longer needed. Because claimant was willing to continue working for the employer on and after June 19th, and the employer did not allow her to do so, the actual work separation that occurred on June 19th was a discharge.

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) 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.

The employer discharged claimant on June 19th because "it didn't make sense" to keep her employed any longer. The employer also alluded to a common industry practice under which employees were not permitted to have extended leaving periods as a possible cause of the discharge. *See* Transcript at 7. Neither reason the employer provided for claimant's discharge on June 19th amounted to a willful or wantonly negligent act attributable to claimant as misconduct. Claimant's discharge was, therefore, not for misconduct, and claimant is not subject to disqualification from receiving benefits because of it.

DECISION: Hearing Decision 17-UI-92714 is set aside, as outlined above.³

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

DATE of Service: October 17, 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.

³ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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