

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1224

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding no work separation occurred and claimant was not disqualified from benefits (decision # 92207). The employer filed a timely request for hearing. On September 29, 2017, ALJ Griffin conducted a hearing, and on October 2, 2017 issued Hearing Decision 17-UI-93682, modifying the administrative decision to conclude that the employer discharged claimant not for misconduct. On October 23, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB with its request for hearing. The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Command Center Inc. was a temporary staffing agency.

(2) The employer employed claimant on May 9, 2017 for a one-day work assignment. Claimant satisfactorily completed the one-day assignment on May 9.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

Whether there was a work separation, and what type of work separation occurred, are at issue in this case. For the purpose of determining work separations, the term "work" means "the continuing relationship between and employer and an employee." OAR 471-030-0038(1)(a). OAR 471-030-0038(1)(a) also provides that, in the case of individuals working for temporary agencies, the employment relationship shall be deemed severed at the time that the work assignment ends. 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). 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).

That the employer is a temporary agency is not in dispute. The employer implicitly asserted that there was no work separation because claimant was still “on [the employer’s] records” and the employer would offer claimant continuing work if he contacted the employer. Audio Record at 10:10-10:24, 12:51-13:10. However, OAR 471-030-0038(1)(a) provides that for individuals working for temporary agencies like this employer, an employment relationship is severed at the time that a work assignment ends. In other words, notwithstanding whether claimant contacted the employer for another work assignment after May 9, 2017, a work separation occurred when his one-day work assignment ended on May 9. Because no work remained available to him under that work assignment, the work separation was a discharge.

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) 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.

Claimant’s discharge from the one-day assignment occurred because the assignment ended, and not because of conduct attributable to him as a willful or wantonly negligent violation of the employer’s expectations. Claimant’s discharge was not for misconduct, and he is not subject to disqualification from receiving unemployment insurance benefits on the basis of that discharge.

DECISION: Hearing Decision 17-UI-93682 is affirmed.

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

DATE of Service: November 20, 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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