

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1314

Hearing Decision 17-UI-95370 Vacated – No Disqualification

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 13, 2017, the Oregon Employment Department (the Department) served notice of administrative decision # 82453, which found that claimant was fired by Home Care Workers on May 15, 2017 because she lost the “license, certification or other authority necessary for the job” by failing “to provide your fingerprints after receiving a request via mail from the State,” and concluded claimant was “fired for misconduct connected with work.” Claimant filed a timely request for hearing. On July 12, 2017, ALJ Monroe conducted a hearing, and on July 14, 2017 issued Hearing Decision 17-UI-88076, concluding claimant’s discharge was not for misconduct. Hearing Decision 17-UI-88076 included findings that claimant was discharged by Home Care Workers on May 18, 2017 when that entity “terminated claimant’s provider number because she had not completed the fingerprinting process necessary to ensuring [*sic*] that she had successfully passed the background check.” Based upon those findings, Hearing Decision 17-UI-88076 reasoned that claimant made substantial efforts to comply with the fingerprinting and background check requirement, submitted fingerprints twice, and received conflicting information from the employer about what she was required to do, making claimant’s loss of license – which caused Home Care Workers to terminate her provider number and discharge her from caring for its clients – *not* attributable to claimant as willful or wantonly negligent misconduct. On August 3, 2017, Hearing Decision 17-UI-88076 became final without any party to the proceedings having filed an application for review with the Employment Appeals Board (EAB).

On August 8, 2017, the Department served notice of administrative decision # 91630, which, like decision # 82453, found that claimant was fired by Home Care Workers on May 15, 2017 because she lost the “license, certification or other authority necessary for the job” by failing to “provide your fingerprints when requested by the State of Oregon . . .,” and concluded that claimant was “fired for misconduct connected with work.” Claimant filed a timely request for hearing. On October 25, 2017, ALJ S. Hall conducted a hearing and issued Hearing Decision 17-UI-95370, concluding that claimant’s discharge by Home Care Workers *was* for misconduct. Like Hearing Decision 17-UI-88076, Hearing Decision 17-UI-95370 found as fact that claimant’s discharge was based upon the May 18th termination of claimant’s provider certification for failing to “submit the fingerprints necessary to complete the background check.” Based upon those findings, Hearing Decision 17-UI-95370 reasoned that claimant’s failure to comply with the fingerprinting and background check requirement “was wantonly

negligent.” On November 14, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-95370 with EAB.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-95370 is vacated, and claimant may not be disqualified from benefits based upon her May 18th loss of certification and resultant termination of her provider number and separation from employment through Home Care Workers.

ORS 657.273(1) provides that “the decisions, findings, conclusions, final orders and judgments that arise out of hearings under ORS 657.270” may be used for the purpose of claim preclusion or issue preclusion in administrative actions and proceedings under ORS chapter 657. The doctrine of “issue preclusion” prohibits a party to a proceeding from re-litigating matters that have already been decided in other proceedings involving the same parties expecting a different outcome. In other words, regardless how many clients claimant might have served through Home Care Workers, her May 18th loss of certification and Home Care Workers’ discontinuation of claimant’s employment with its clients cannot be deemed both not attributable to her as misconduct and attributable to her as misconduct. That is what has happened here.

Claimant, the employer and the Department were all parties to the proceedings underlying Hearing Decision 17-UI-88076, regardless of whether or not they all appeared during those proceedings. The proceedings underlying Hearing Decision 17-UI-88076 established the facts underlying claimant’s May 18th loss of certification and loss of employment through Home Care Workers, in support of the conclusion that her discharge by Home Care Workers for that reason was not for misconduct. Hearing Decision 17-UI-88076 having become final, all parties are now bound by the findings and conclusions reached therein, that claimant is not subject to disqualification from benefits based upon her May 18th loss of certification and loss of employment through Home Care Workers, and the parties are precluded from re-litigating those events in new or separate proceedings. Hearing Decision 17-UI-95370 must therefore be vacated.

DECISION: Hearing Decision 17-UI-95370 is vacated, as outlined above. Claimant is not subject to disqualification from benefits based upon the Home Care Workers work separation adjudicated in decision # 91630.

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

DATE of Service: December 13, 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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