

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1321

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 81428). The employer filed a timely request for hearing. On November 6, 2017, ALJ S. Lee conducted a hearing, and on November 8, 2017 issued Hearing Decision 17-UI-96479, affirming the Department's decision. On November 15, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Ray's Food Place last employed claimant as a deli clerk from July 3 until between July 18 and 21, 2017.

(2) From July 5 through 14, 2017, claimant missed several days of work due to mental health issues. On July 18, 2017, claimant sent a text message to the employer's store manager in which she stated that she was sorry for letting him down. The store manager misinterpreted claimant's text message to mean that she was quitting. However, claimant was willing to continue working for the employer.

(3) Based on the store manager's misinterpretation of claimant's text message, the employer processed the termination of claimant's employment and prepared her final paycheck. On July 21, 2017, the store manager telephoned claimant and left claimant a voice message stating that her final paycheck was ready to be picked up.

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

The primary issue in this case is whether claimant voluntarily left work or was discharged. OAR 471-030-0038(2)(a) (August 3, 2011) states that 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. 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. *Id.*

At hearing, the parties agreed that on July 18, 2017, after having missed several days of work due to mental health issues, claimant sent the employer’s store manager a text message in which she stated that she was sorry for letting him down. The store manager testified that claimant also stated in the text message that that she would not be coming into work again. Audio Record at 8:20-8:40. However, claimant denied having stated that she would not be coming into work again, and testified that she had been willing to continue working for the employer. Audio Record at 15:30-16:00, 29:50-30:05, 34:45-35:05. Neither party offered a copy of claimant’s text message into evidence, and we find no basis in the hearing record for a determination that claimant or the store manager was not a credible witness. We therefore find it likely that the store manager misinterpreted claimant’s text message to mean that she was quitting, and that claimant was, in fact, willing to continue working for the employer. We therefore conclude that claimant did not voluntarily leave work on July 18, 2017.

Based on the store manager’s misinterpretation of claimant’s text message, the employer processed the termination of claimant’s employment, prepared her final paycheck, and notified her that it was ready to be picked up. In doing so, the employer severed the employer-employee relationship. Because claimant was willing to continue working for the employer for an additional period of time, but was not allowed to do so by the employer, the work separation is a discharge, and not a voluntary leaving. The next issue is whether claimant’s discharge disqualifies her from the receipt of unemployment insurance benefits.

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. Here, the employer discharged claimant because its store manager misinterpreted her text message to mean that she was quitting, and not because claimant violated the standards of behavior that an employer has the right to expect of an employee, or disregarded the employer’s interest. Claimant’s discharge therefore was not for misconduct. She is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-96479 is affirmed.

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

DATE of Service: December 15, 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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