

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1446

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 11, 2017 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant committed a disqualifying act (decision # 143204). Claimant filed a timely request for hearing. On November 30, 2017, ALJ Murdock conducted a hearing, and on December 7, 2017 issued Hearing Decision 17-UI-98536, affirming the Department's decision. On December 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Erickson Air Crane Incorporated employed claimant as a senior treasury analyst from January 24, 2017 until May 17, 2017.

(2) The employer expected claimant to report for work as scheduled and, if he was going to be absent, to contact his supervisor before the starting time of his shift. Claimant understood the employer's expectations.

(3) On May 15, 2017, claimant was scheduled to work, but did not report for work due to effects from alcohol consumption. That day, claimant failed to call in and notify his supervisor that he was going to be absent. On May 16 and 17, 2017, claimant also missed work due to alcohol consumption.

(4) On May 17, 2017, claimant called the employer around midday, after the scheduled start of his shift, and notified the employer that he was entering a hospital treatment program for alcohol abuse. On May 17, 2017, claimant was admitted to Cedar Hills Hospital and entered its alcohol treatment program. At the time claimant entered Cedar Hills Hospital, its treatment program had various licenses and accreditations. However, the treatment program at Cedar Hills Hospital was not authorized and licensed under the provisions of OAR Chapter 415 until October 2017.

(5) On May 17, 2017, the employer discharged claimant for his absences on May 15 through 17, 2017.

CONCLUSIONS AND REASONS: Claimant committed a disqualifying act.

ORS 657.176(2)(g) provides that an individual is disqualified from benefits if the individual was discharged for being absent or tardy in reporting for work and the absence or tardiness occurred as a result of the use of alcohol on a second or subsequent occasion within a period of 12 months unless the individual was participating in a recognized alcohol rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days of the date of the discharge. OAR 471-030-0126(4) (August 1, 2004) provides that a “recognized alcohol rehabilitation program” means a program authorized and licensed under the provisions of OAR chapter 415 or similar provisions of another state.

Claimant was absent from work on three consecutively scheduled days as a result of alcohol consumption, May 15, 16 and 17, 2017, and consequently was subject to disqualification from benefits under ORS 657.176(2)(g) unless he was participating in a recognized treatment program within 10 days of the date of the discharge. Although claimant was admitted to an alcohol rehabilitation program at Cedar Hills Hospital on May 17, 2017, which was within ten days of his discharge, the issue is whether he was admitted to and participating in a “recognized” program at that time. The only evidence in the record about the authorization and licensure of the Cedar Hills Hospital program was offered by claimant who testified that the program was not authorized and licensed under OAR chapter 415 until October 2017, or approximately five months after his discharge. Audio at ~18:15.¹ As a result, the program claimant entered on May 17, 2017 and thereafter began participating in was not authorized and licensed under OAR chapter 415, and was not a “recognized” alcohol rehabilitation program within the meanings of ORS 657.176(2)(g) and OAR 471-030-0126(4). There is no statutory or regulatory provision that gives EAB discretion to find that a program not authorized and licensed under OAR chapter 415 may be considered the equivalent of a “recognized” alcohol rehabilitation program for purposes of falling within the exemption from disqualification established by OAR 657.176(2)(g). Accordingly, claimant is disqualified from benefits based on his May 17, 2017 discharge for at least two absences that were due to the effects from alcohol consumption.

Claimant was discharged for an act that disqualifies him from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-98536 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: January 19, 2018

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.

¹ Since Cedar Hills Hospital is located in Beaverton, Oregon and because there was no evidence to the contrary, we infer that its alcohol treatment program is unlikely to be authorized or licensed under the auspices of any state other than Oregon.

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