

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0171

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 153418). Claimant filed a timely request for hearing. On January 4, 2018, ALJ Seideman convened a hearing at which claimant did not appear and issued Hearing Decision 18-UI-100183, dismissing claimant's request for hearing because of his failure to appear. On January 10, 2018, claimant filed a request to reopen the hearing. On February 5, 2018, ALJ Seideman conducted a hearing, and on February 9, 2018 issued Hearing Decision 18-UI-103005, allowing claimant's request to reopen and concluding the employer discharged claimant, but not for misconduct. On February 16, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings, analysis and conclusion in Hearing Decision 18-UI-103005 allowing claimant's request to reopen the hearing are **adopted**.

FINDINGS OF FACT: (1) Harbor Village RV Park employed claimant as the on-site manager of a mobile home and RV park from August 31, 2016 until November 10, 2017. Prior to working for the employer, claimant managed Oak Village, a mobile home park that was operated under a legal entity that had the same owners as the employer, for approximately 12 years.

(2) The employer expected claimant to behave reasonably toward the tenants of the park, including refraining from displaying fits of temper, using foul language or engaging in intimidating or threatening behaviors.

(3) During claimant's employment, the employer hired an office manager for the park that claimant managed. That office manager was the daughter of claimant's ex-wife. Based on past occurrences

between them, claimant had a poor relationship with the office manager. Claimant believed that the office manager intensely disliked him and wanted him to lose his job.

(4) Sometime before October 26, 2017, the employer received some anonymous complaints about claimant that appeared to be from park residents. The complaints raised serious concerns about how claimant treated the residents. The employer's owners as well as its off-site manager did not often visit the park. On October 26, 2017, however, the off-site manager and the owner visited the park and told claimant that if his behavior did not improve or if the employer received more complaints about him, he would be discharged.

(5) After October 26, 2017, claimant distributed a survey or questionnaire to the park residents seeking, among other things, information about what park improvements they wanted the employer to undertake. Some of the responses that were returned addressed the manner in which claimant behaved toward tenants. The responses claimed that claimant regularly lost his temper, often used profanity, frequently verbally abused, screamed at and demeaned park residents, and intimidated and threatened them. These responses were forwarded to the employer. The responses that the employer received were anonymous and their authors were unidentified. The employer did not discuss the substance of these responses with claimant.

(6) On November 10, 2017, the employer discharged claimant based on the anonymous responses the employer received alleging that claimant had engaged in objectionable behavior toward park residents.

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

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) (August 3, 2011) 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 carries the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

At hearing, the employer's off-site manager testified that the employer discharged claimant based on the allegations contained in anonymous complaints about claimant's behavior. Audio at ~13:16, ~34:37. It appears that neither the off-site manager nor the owner had observed the behaviors alleged in the anonymous complaints about claimant or witnessed any behaviors by claimant that were similar to those alleged. Claimant vigorously denied ever engaging in the types of behaviors alleged in the complaints and stated his belief that the office manager must have in some way fabricated or participated in the fabrication of the complaints that the employer received. Audio at ~18:06, ~18:56, ~19:36, ~27:48, ~29:00, ~32:24. There is no reason in the record to doubt the credibility of either claimant or the off-site manager or the accuracy of either's testimony. However, claimant's first hand-evidence about how he behaved toward the park residents is entitled to greater evidentiary weight than the employer's hearsay, particularly when that hearsay is unattributed and anonymous and it cannot be reliably ascertained if its source(s) had any direct information about claimant's behavior. On this record, in light of claimant's denials, the employer did not meet its burden to show that claimant engaged in misconduct.

The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 18-UI-103005 is affirmed.

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

DATE of Service: March 16, 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.

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