

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0185

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 82253). Claimant filed a timely request for hearing. On January 25, 2018, ALJ Micheletti conducted a hearing, and on February 2, 2018 issued Hearing Decision 18-UI-102422, concluding claimant's discharge was not for misconduct. On February 22, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Plumbers, Inc. employed claimant as a laborer from January 2016 to November 3, 2017.

(2) The employer expected claimant to report to work and work his scheduled hours, Monday through Friday from 7:30 a.m. to 4:00 p.m. The employer also expected claimant to notify the employer of any absences at least an hour in advance. Claimant understood those expectations.

(3) On November 3, 2017, claimant felt unwell and unable to work. He reported to work on time and notified his supervisor that he was not well enough to work. He offered to complete one job despite feeling unwell, and left to travel to the job. The supervisor then told claimant that he was not authorized to leave work for the day. Claimant felt too unwell to work, however, and took the rest of the day off.

(4) That day, the employer discharged claimant for failing to work his scheduled hours on November 3, 2017.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's discharge was 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. Absences due to illness are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for leaving work without authorization. However, claimant left work on November 3rd because he was too unwell to work and he notified his supervisor in advance that he needed to miss work. Absences due to illness, even if they violate an employer's attendance policy, are not misconduct. Claimant's discharge was, therefore, not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 18-UI-102422 is affirmed.

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

DATE of Service: March 22, 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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