

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0205

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 155200). Claimant filed a timely request for hearing. On February 7, 2018, ALJ R. Frank conducted a hearing, and on February 9, 2018 issued Hearing Decision 18-UI-103006, affirming the Department's decision. On February 22, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Godfrey's General Store employed claimant as a clerk and cashier from September 18, 2015 to December 7, 2017.

(2) The employer operates a liquor store and is an agent of the Oregon Liquor Control Commission. As such, the employer prohibited employees from using or being under the influence of alcohol while at work.

(3) During the early morning hours of September 15, 2017, claimant consumed alcohol. Claimant then reported to work at 10:00 a.m. She thought she was capable of working but appeared to others to be under the influence of alcohol. Several days later, the employer's owner reminded claimant it had zero-tolerance for alcohol on the job, and told claimant it was against the rules to even appear to be under the influence while at work. Claimant told the owner she understood.

(4) During the early morning hours of December 2, 2017, claimant again consumed alcohol. She reported to work for her 10:00 a.m. shift appearing to be under the influence of alcohol. Claimant was having a rough day because of some domestic violence issues she had experienced. During her break, claimant consumed an alcoholic Bloody Mary, then returned to work. Claimant spoke with the owner on the phone that day in a slow and deliberate manner the owner associated with being under the influence of alcohol. On December 7, 2017, the employer discharged claimant for working while under the influence of alcohol.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's discharge was 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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had the right to expect claimant to refrain from working while under the influence of alcohol. Claimant knew or should have known that expectation both because the employer was a liquor store and agent of the Oregon Liquor Control Commission. She also knew or should have known as a matter of common sense that it is unacceptable to report to work while intoxicated by, or under the influence of, alcohol. There is no factual dispute that on two occasions, including December 2, 2017, claimant reported to work after having consumed alcohol in the early morning hours and while still under the influence of, or appearing to be under the influence of, alcohol. Nor is there any factual dispute that on December 2, 2017 claimant consumed more alcohol during one of her breaks. Claimant's conduct in all respects amounted to at least wantonly negligent violations of the employer's expectation that she be, and appear to be, sober while at work in its liquor store.

Claimant's conduct involved repeated violations of the employer's expectations, and therefore cannot be excused as an isolated instance of poor judgment. Claimant neither believed nor had reason to believe that she was sober at the time she was working on December 2nd, or that the employer would condone her actions in reporting to work while intoxicated and consuming additional alcohol during her break that day, so her conduct cannot be excused as a good faith error. The employer therefore discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 18-UI-103006 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, 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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