

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0328

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 90236). Claimant filed a timely request for hearing. On March 20, 2018, ALJ Snyder conducted a hearing, and on March 27, 2018 issued Order No. 18-UI-105992, concluding claimant's discharge was not for misconduct. On April 5, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

EAB considered claimant's written argument to the extent it was relevant and based upon the hearing record. Claimant argued that the ALJ erred in excluding Exhibit 1 from evidence based upon the employer's alleged failure to receive the documents prior to the hearing, and provided some evidence that the employer had, in fact, received the exhibit prior to the hearing. Regardless whether the employer received the documents or accurately described receipt of them at the hearing, the ALJ also excluded the documents because, as they appear in the hearing record, the images and other content are of such poor quality that it is impossible to tell what the images are or what the significance of the exhibit should be to this case. Audio recording at 4:00-4:20. The documents therefore have no probative value, and the ALJ properly excluded them from evidence.

FINDINGS OF FACT: (1) JP Morgan Chase Bank employed claimant as a branch manager from August 14, 2014 to January 23, 2018.

(2) The employer prohibited employees from misusing alcohol at the branch locations, and prohibited employees from posting workplace photographs to social media. Claimant understood both prohibitions.

(3) Employees in claimant's branch regularly took group photographs inside the bank branch. They were careful to take the photos in front of a blank wall, or in the break room, and to exclude cash, customers, customer information or secure areas. Employees shared the photos throughout the employer's market, including to managers. Claimant was aware of those photographs and aware they were sent to managers, and was aware that management never told employees the conduct was prohibited.

(4) The employer planned to close claimant's branch location effective November 30, 2017. Staff suggested to claimant that the remaining employees celebrate together by having a shot of alcohol in the lobby after they finished closing the branch. After speaking with the market manager on November 29, 2017, claimant and her staff understood that after the branch closed it was no longer a branch and rules prohibiting alcohol consumption in the branches no longer applied.

(5) On November 30, 2017, the employer permanently closed claimant's branch. After the branch closed, and the employees were off the clock, claimant and other employees shared a shot of alcohol together, took group photographs in the vacant lobby, and claimant posted photographs to a social media platform. Subsequently, claimant's photos were "shared throughout the market," and the market manager learned about the photos and alcohol consumption. Audio recording at 7:15.

(6) On January 23, 2018, the employer discharged claimant for misusing alcohol and taking photographs inside the bank branch.

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. Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer established the likelihood that claimant violated its policies by consuming alcohol in the closed bank branch after hours and by taking and posting photographs taken from inside the branch to social media that was "shared throughout the market." At the time of the violations, however, the record shows that claimant sincerely believed that her conduct did not violate the employer's policies. Regarding her consumption of alcohol, although the evidence of whether the market manager gave claimant permission to consume alcohol with her employees after the branch closed is no better than equally balanced, it is more likely than not that claimant's belief that she had permission was sincere and based upon her plausible understanding of the employer's policies and credible belief that she had permission. Likewise, regarding posting photographs to a social media platform that was shared throughout the market, claimant was aware that the employer sometimes allowed or encouraged photographs of events to be taken and posted or shared with the market, was aware of many times others took and shared photographs with the market manager or other management and did not get in trouble, did not think it was inappropriate to take and share group photographs commemorating the branch closure, and, again, plausibly did not think that rules applying to the employer's branch locations applied

to the branch she managed after the branch had permanently closed. Therefore, although claimant's consumption of alcohol and posting the photographs appear to have violated the employer's policies, the violations occurred due to claimant's sincere but mistaken belief that her conduct did not violate the policies, making her conduct the result of a good faith error. Good faith errors are not misconduct; therefore, claimant's discharge was not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits because of her discharge.

DECISION: Order No. 18-UI-105992 is affirmed.

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

DATE of Service: May 2, 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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