

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0333

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73121). Claimant filed a timely request for hearing. On March 21, 2018, ALJ Janzen conducted a hearing, and on March 23, 2018 issued Order No. 18-UI-105837, concluding that claimant's discharge was not for misconduct. On April 4, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's and the employer's written arguments to the extent they were relevant and material to whether claimant's discharge was for misconduct.

FINDINGS OF FACT: (1) Comfort Inn South employed claimant as head housekeeper from August 12, 2016 to February 1, 2018. Claimant had worked in the same position under previous owners since 2005.

(2) In November 2017, the employer placed claimant on a performance improvement plan because she had been allowing employees to work more than their scheduled hours. Claimant allowed one person in particular, the breakfast person, to exceed her scheduled hours by 11 to 24.51 hours in various pay periods. The general manager and the head of the employer's management company told claimant she was to make sure employees followed their posted schedules and to let them know if employees needed extra hours. Claimant understood the employer's expectations.

(3) On December 8, 2017, claimant met with the general manager and head of the management company about staffing issues while several employees were on vacation. Claimant understood that "it was fine to allow the breakfast lady to help out with laundry" when more than 40 rooms needing to be cleaned, and that the breakfast person was trained to help with laundry until 3:30 p.m. Transcript at 19-20. In mid-December, the general manager thanked claimant for her improvement in matching employees' work hours to their scheduled hours.

(4) Between January 1, 2018 and January 15, 2018, the employer scheduled the breakfast person to work 50 hours, but claimant allowed her to work 71.60. Claimant allowed the breakfast person to exceed her scheduled work hours because three employees were away from work until mid-January and claimant needed the help. Claimant believed the head of the management company had authorized her to let the breakfast person work more hours while the other employees were on vacation.

(5) On January 31, 2018, claimant had 31 rooms that needed to be cleaned and additional rooms that needed to be cleaned due to construction, and believed the total number of rooms that needed to be cleaned exceeded 40. The employer had not scheduled the regular laundry person to work, or had sent the laundry person home because there were fewer than 40 rooms to clean that day. Claimant had the breakfast person stay over to help with the laundry. The general manager thought it was “extremely slow” that day, that the other three employees had returned from their vacations, and told claimant she thought “[t]here was no reason for her to keep” the breakfast person at work. Transcript at 17. Claimant disagreed, and thought the amount of work she had to do required that she keep the breakfast person at work to help with laundry.

(6) On January 31, 2018, the general manager reported claimant to the head of the management company. They examined the breakfast person’s hours and discovered that she had worked approximately 12 hours more than she had been scheduled to work in that pay period. On February 1, 2018, the employer discharged claimant for allowing the breakfast person to exceed her scheduled hours.

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 discharged claimant because, on January 31st, she again allowed the breakfast person to remain at work doing laundry, causing the breakfast person to exceed her scheduled hours in violation of the employer’s expectation and the terms of a performance improvement plan claimant had completed in mid-December. There is no dispute that claimant allowed the breakfast person to exceed her scheduled hours on January 31st, and no dispute that the employer did not consider the business needs sufficient to warrant her doing so on that occasion; however, the employer also did not dispute that claimant had been told she could allow the breakfast person extra hours to help with laundry when she had more than 40 rooms to clean. On January 31st, claimant thought there were more than 40 rooms to clean, and that with the number of rooms she had to clean she was authorized to let the breakfast person stay at work to do laundry. Although claimant was, apparently, mistaken as to the number of rooms she had to clean and whether there were sufficient rooms to warrant keeping the breakfast person at work, she sincerely believed on January 31st that she was acting within the bounds of her authority by allowing the breakfast person to exceed her hours. Claimant’s conduct was, therefore, no worse than a good faith error.

Because good faith errors are not misconduct, claimant's discharge was not for misconduct, and she may not be disqualified from receiving benefits because of this work separation.

DECISION: Order No. 18-UI-105837 is affirmed.

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