

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0520

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73511). Claimant filed a timely request for hearing. On April 18, 2018, ALJ Murdock conducted a hearing, and on May 4, 2018 issued Order No. 18-UI-108778, concluding the employer discharged claimant, but not for misconduct. On May 22, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Asante employed claimant from February 21, 1991 until February 8, 2018 as a coordinator in its phlebotomy department.

(2) The employer expected claimant to maintain the confidentiality of patient records and to refrain from accessing “protected health information,” as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for personal use. Claimant received training regarding the employer’s expectations, including training sessions regarding relevant provisions of HIPAA. Claimant understood those expectations.

(3) On January 5, 2018, during her lunch break, claimant was trying to complete an application for a joint car loan for her daughter. To obtain her daughter’s social security number for the application, claimant viewed the employer’s records screen for her daughter that contained her name, date of birth, address, social security number and photograph. Exhibit 1. The screen claimant viewed contained no medical information. Claimant had entered her daughter’s demographic data into the employer’s records while working for the employer in the past. Her adult daughter was still her dependent. Claimant did not contact her daughter directly to obtain the social security number because she believed her daughter, who was working, would be unavailable. Claimant hoped to complete the loan application before the bank closed for the weekend.

(4) The employer's internal audit system alerted the employer to claimant's access of her daughter's records, and the employer investigated the matter. Claimant told the employer she accessed the records to obtain information she needed to complete a car loan for her daughter.

(5) On February 8, 2018, the employer discharged claimant for violating its confidentiality policy and HIPAA.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer discharged claimant, but not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. OAR 471-030-0038(3)(a) (January 11, 2018) 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. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of which an employer has the right to expect of an employee.

The employer discharged claimant because she violated its confidentiality policy and HIPAA expectations on January 5, 2018 when she accessed the employer's records for her daughter for personal use. However, for claimant's conduct on January 5 to constitute misconduct, the employer must prove by a preponderance of the evidence that claimant's act demonstrated a conscious indifference to, or a willful deviation from, the standards the employer had the right to expect of her. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). We conclude that claimant's conduct did not demonstrate a conscious indifference or willful deviation from the employer's policies and its consequences on January 5.

Although claimant received training regarding the employer's confidentiality policy and had understood it, the record also shows she did not consider at the time she looked in the records to obtain the social security number that doing so would violate the employer's confidentiality policy or HIPAA. Claimant's assertion is plausible and credible under the circumstances shown in the record where claimant was rushing to complete the loan application for her daughter's benefit during her lunch break before the bank closed for the weekend. In addition, claimant herself entered the information she viewed into the employer's records for her daughter who was still her dependent. Claimant looked only at her daughter's demographic information, and did not look at her daughter's medical chart. Moreover, it was unlikely that her daughter would have objected to claimant giving the information to a bank for a joint loan or that anyone else would obtain the information from the disclosure. Based on these factors, the employer has not shown that it was more probable than not that claimant had the requisite conscious mental state to make her policy violation willful or wantonly negligent behavior. Therefore, the employer did not show that it discharged claimant for misconduct.

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

DECISION: Order No. 18-UI-108778 is affirmed.

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

DATE of Service: June 21, 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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