

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0627

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 112118). Claimant filed a timely request for hearing. On June 6, 2018, ALJ Snyder conducted a hearing, and on June 13, 2018 issued Order No. 18-UI-111245, affirming the Department's decision. On June 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Keith Manufacturing Co. employed claimant as a machine operator from August 26, 2016 until April 3, 2018.

(2) Claimant operated a machine that fabricated parts to specification. As part of its process, the employer expected claimant to inspect and measure the fabricated parts for deviation from specification, to discard parts that deviated and to prepare a daily scrap report detailing the number of and reasons that parts were discarded. Claimant understood the employer's expectations.

(3) On February 6, 2018, claimant's lead was informed that claimant was not completing daily scrap reports. That day, the lead told claimant that he needed to complete scrap reports after each shift that he worked.

(4) On March 22, 2018, claimant fabricated a number of rods that deviated from specification. Due to the quantity of defective rods, the employer suspected claimant was not following quality control processes. On March 26, 2018, claimant fabricated twelve rods that deviated from specification, and the rods were sent back to claimant's department. When the rods were returned, claimant's lead determined that claimant had not completed a scrap report for the day that the rods were fabricated. The lead spoke to claimant and reminded him that he needed to prepare scrap reports daily.

(5) On April 2, 2018, claimant's lead discovered that claimant had not completed a scrap report for that day. When the lead asked claimant why he had not prepared the scrap report, claimant had no explanation.

(6) On April 3, 2018, the employer discharged claimant for failing to complete a scrap report on April 2, 2018.

CONCLUSIONS AND REASONS: The employer discharged claimant 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) (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. The employer had the burden to demonstrate claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Claimant did not dispute at hearing his awareness that the employer expected him to complete a scrap report each day that he worked. Audio at ~18:55. While claimant testified that he did not recall his lead speaking to him on February 6, March 22, March 26 and April 2, 2018 about preparing daily scrap reports, he did not deny that those conversations occurred. Audio at ~18:38. Notably, claimant did not contend that, without exception, he completed daily scrap reports and testified that he did not know if he completed a scrap report on the dates the employer contended that he had not and conceded that, at least, "there was probably a day or two I did not fill out scrap reports." Audio at ~18:05, ~18:38, ~18:58, ~19:26. In light of the records prepared by claimant's lead contemporaneously with the lead's discussions with claimant, claimant's failure to meaningfully dispute the employer's testimony and claimant's concessions, the employer demonstrated more likely than not that claimant did not prepare and complete scrap reports on February 6, March 26 and April 2, 2018. Because claimant was aware of the employer's expectation that he do so and there is nothing in the record suggesting that exigent circumstances or factors beyond claimant's control intervened on any of those days preventing claimant from completing those scrap reports, it is inferred that claimant failure to complete those scrap reports was a wantonly negligent violation of the employer's standards.

While claimant's behavior on April 2, 2018, may have been wantonly negligent, it may be excused from constituting misconduct if it was an isolated instance of poor judgment within the meaning of OAR 471-030-0038(3)(b). Behavior may be considered an "isolated instance of poor judgment" if, among other things, it was a single or infrequent occurrence on claimant's part rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Here, claimant's behavior was not only a wantonly negligent violation of the employer's standards on April 2, 2018 it also was a wantonly negligent violation of those same standards on February 6 and March 26, 2018. Because claimant's wantonly negligent behavior was not a single or infrequent occurrence, his behavior on April 2, 2018 may not be excused as an isolated instance of poor judgment.

Nor is claimant's behavior on April 2, 2018 excused from constituting misconduct as a good faith error under OAR 471-030-0038(3)(b). Claimant did not contend that he failed to complete a daily scrap report for April 2, 2018 because he misunderstood the employer's requirements or because he sincerely

thought the employer would excuse his noncompliance with its standards. There is insufficient evidence in this record to support that claimant's behavior on April 2, 2018 was the result of a good faith error.

The employer discharged claimant for unexcused misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-111245 is affirmed.

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

DATE of Service: July 23, 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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