

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0644

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84609). Claimant filed a timely request for hearing. On June 18, 2018, ALJ Griffin conducted a hearing, and on June 22, 2018 issued Order No. 18-UI-111842, concluding the employer discharged claimant, but not for misconduct. On June 27, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) D. A. Bentley Construction LLC employed claimant as financial controller from October 3, 2016 until April 2, 2018.

(2) The employer expected claimant to perform work tasks accurately and to complete those tasks within the time period instructed. Claimant understood the employer's expectations.

(3) As controller, claimant was responsible for the accounting aspects of the employer's finances, including accounts receivable and payable, payroll and month-end and other periodic reporting. No other staff assisted claimant in performing her duties. Claimant often completed her work tasks later than the employer had instructed or expected.

(4) As claimant's employment progressed, the employer became concerned about the timeliness, accuracy and quality of claimant's work. The employer's president began meeting with claimant weekly to monitor her work performance. The president told claimant that it was her responsibility to complete her work accurately and on a timely basis.

(5) As of approximately the end of 2017, claimant had stopped preparing a hard copy biweekly payroll report for distribution to the employer's president because claimant understood that the president no longer wanted to receive one and considered its production wasteful since the report was also available in claimant's office. By approximately February 2018, claimant knew that the employer's outside accountants would be performing an audit of the employer sometime during spring 2018. Claimant knew the accountants expected her to provide various financial reports and other information to assist

them in the audit. The president told claimant that the audit was to be her “number one priority.” Transcript at 22. Sometime later, the accountants made an appointment to meet with claimant on March 26, 2018 to begin their review for the audit.

(6) The employer evaluated the work claimant addressed or performed during the work week of March 26 through March 30, 2018 to assess its adequacy. On Monday, March 26, 2018, the employer determined that a weekly aging report for accounts receivable that should have been prepared on Friday, March 23, 2018 had not been completed, and when an employer representative asked claimant why it had not been prepared, claimant stated that she had “forgotten.” Transcript at 8. The employer determined that two monthly rent checks that claimant should have issued and sent by approximately Monday, March 26, 2018 for delivery to the employer’s landlords by April 1, 2018 had not been, and the landlords received both rent checks late. The employer determined that claimant did not meet with its outside accountants as scheduled on March 26, 2018 to begin the annual review underlying its audit of the employer because claimant had, without notice to the president or any other employer representative, rescheduled the review to begin on March 27, 2018. The employer determined that a vendor aging report that the employer expected to be generated each Monday for the president was not given to the president by the close of business on Monday, March 26, 2018, but on Tuesday, March 27, 2018.

(7) Also during the work week of March 26 through March 30, 2018, the employer determined that, although the president had instructed claimant to issue a particular check by noon on Monday, March 26, 2018, that check was not given to the president until 12:20 p.m. The employer also determined that another check that the president had told claimant to issue by 3:00 p.m. on Tuesday, March 27, 2018 to send to its payee by UPS on March 27, 2018 was not issued by 3:00 p.m. because, without consulting with the president, claimant had decided to send the check by UPS on March 28, 2018. The employer determined that by March 30, 2018 claimant had not set up a new job number in the employer’s system as the president asked her to do on March 29, 2018 when it should have taken less than an hour to do so. The employer determined that by the end of the March 30, 2018 work week, claimant had not generated a biweekly payroll report for the president for that week. The employer determined that, as of March 30, 2018, the end of the employer’s fiscal quarter, claimant had not issued or sent out the quarterly compensation checks for members of the employer’s Board of Directors. The employer determined that claimant was not prepared to and failed to review the employer’s operating budget with the president as scheduled on March 30, 2018, and the review needed to be rescheduled, after having been rescheduled before on March 23, 2018.

(8) On April 2, 2018, the employer discharged claimant for deficient and untimely work occurring during the week of March 26, 2018 through March 30, 2018.

CONCLUSIONS AND REASONS: 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 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. 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 behavior which an employer has the right to expect of an employee. The employer carries the burden to prove claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Inefficiency resulting from lack of job skills or training is not misconduct. OAR 471-030-0038(3)(b).

The evidence shows that claimant was not adhering to the employer's expected timelines in completing her work, and sometimes needed to reschedule meetings because she was not prepared for them. However, the employer did not show that it ever expressly notified claimant that it would impose disciplinary sanctions if she failed to meet particular work deadlines. In addition, the employer did not show that it ever expressly notified claimant that she was prohibited from extending the employer's expected timelines for task completion or rescheduling meetings for which she did not have time to adequately prepare. On this record, it does not appear that it was claimant's purposeful intention to not meet the employer's standards for timeliness. It also does not appear on this record that the behavior for which the employer discharged claimant was wantonly negligent. The employer did not show by a preponderance of the evidence that claimant knew or should have known that the defaults the employer cited as having occurred during the week of March 26 through 30, 2018 would probably result in violations of the employer's standards. In addition, the employer also failed to show that claimant's failures in timely work performance were not the result of inefficiencies due to a lack of job skills or abilities which, by definition, is not misconduct. *See* OAR 471-030-0038(3)(b).

The employer failed to establish that it discharged claimant for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-111842 is affirmed.

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

DATE of Service: August 1, 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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