

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0646

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 82125). The employer filed a timely request for hearing. On June 18, 2018, ALJ Snyder conducted a hearing, and on June 22, 2018 issued Order No. 18-UI-111887, affirming the Department's decision. On June 28, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lowes Home Centers, LLC employed claimant, last as a head cashier, from November 5, 2015 to April 25, 2018.

(2) The employer's return policy required that employees not refund or rebill customers for items unless the item was physically in the store at the time of the transaction. The employer provided claimant with online training on its policy when she trained as a cashier. Claimant was a head cashier, and received additional online training and was present during periodic policy reviews.

(3) On April 12, 2018, a manager from a different store called claimant and told her to complete a price adjustment for a customer whose items had been purchased at the other store. The items were not physically located in claimant's store. The manager assured claimant that he would send the item being adjusted to claimant's store as soon as possible, and provided her with the product information she needed to complete the transaction.

(4) While the manager was on the phone with claimant, claimant asked a manager in claimant's store for an override. Claimant started to explain the situation, and before she completed the explanation the manager told her to go ahead with the transaction. The manager thought claimant was processing a price match, did not know that the item was not in the store, and performed the override for claimant.

(5) Claimant subsequently needed help completing the transaction and asked her supervisor for help. Claimant explained the situation to the supervisor in detail. At the time, she had not yet completed or

processed any part of the customer's transaction, and the manager from the other store was still on the phone waiting for claimant to complete the transaction. The supervisor helped claimant complete the transaction, without ever telling claimant that the transaction violated the employer's policy. Claimant did not think she had violated the employer's policy by completing the transaction.

(6) The supervisor reported the incident to upper management. The employer had previously issued claimant a written warning and final written warning for her attendance and failures to complete cashier observations. On April 25, 2018, the employer discharged her for completing the April 12th transaction when the item was not in the store.

CONCLUSIONS AND REASONS: We agree with the Department and 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 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 final incident, without which the employer would not have discharged claimant on April 25th, occurred on April 12th when claimant completed a customer's price match transaction even though the item was not physically present in the store. That incident was, therefore, the proximate cause of claimant's discharge and the initial focus of the misconduct analysis. Only if we determined that claimant's conduct in that incident was willful or wantonly negligent would we analyze the prior incidents that had resulted in the employer's issuance of written and final warnings to claimant.

The employer prohibited employees from processing rebill and price match transactions for customers whose items were not physically present in the same store as the employee at the time of the transaction. Although claimant should have known about that policy because of her training as a cashier and head cashier, it is not clear in this case that she, or her supervisor or other members of management, understood it, or understood that the policy applied to the April 12th price match transaction. That transaction began because a manager from a different store, who knew the item that was the subject of the transaction was not in claimant's store, called claimant and directed her to process the transaction anyway. Claimant sought help from one manager in her store who did not wait for claimant to fully explain the situation before he gave her a manager override, and sought help from a supervisor who assisted her to process and complete the entire transaction without ever expressing to claimant that the transaction was in violation of the employer's policy because the item that was the subject of the transaction was not in claimant's store at the time of the transaction. In total, claimant interacted with three managers or supervisors during the course of the transaction, and none of them suggested to claimant that the transaction was a violation of the employer's expectations. Claimant therefore could not reasonably have been expected to realize that she was violating the employer's policy by completing the transaction, much less have violated the policy willfully or with wanton negligence.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-111887 is affirmed.

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