

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0691

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 82456). Claimant filed a timely request for hearing. On June 21, 2018, ALJ Scott conducted a hearing, and on June 26, 2018 issued Order No. 18-UI-112021, concluding claimant's discharge was not for misconduct. On July 10, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Doctors Clinic LLP employed claimant as a medical assistant from April 12, 2017 to May 3, 2018.

(2) The employer expected claimant to report to work when scheduled. Claimant understood the employer's expectation. The employer had a policy under which employees with 15 attendance occurrences were subject discharge. The employer had concerns about claimant's attendance and discussed her attendance with her in June, July and November 2017.

(3) Claimant was sick in late-April and early-May 2018 and missed six scheduled shifts. On May 3, 2018, the employer discharged claimant because her April and May absences resulted in her accrual of 15 or more attendance occurrences.

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) (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. Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because she violated its policy by accruing 15 or more attendance occurrences. However, the employer did not decide to discharge claimant until she had six absences in late-April and early-May 2018; those absences were therefore the proximate cause of the employer's decision to discharge claimant, and the initial focus of the misconduct analysis.

Although claimant violated the employer's expectation that she work her scheduled shifts by missing six shifts in late-April and early-May 2018, she missed work because she was sick. Absences due to illness are not misconduct, even if those absences might otherwise violate an employer's expectations. The proximate cause of claimant's discharge was, therefore, not misconduct, and claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Order No. 18-UI-112021 is affirmed.

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

DATE of Service: August 8, 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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