

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0756

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 93652). Claimant filed a timely request for hearing. On July 5, 2018, ALJ Frank conducted a hearing, and on July 13, 2018, issued Order No. 18-UI-113095, concluding the employer discharged claimant, but not for misconduct. On August 2, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) First Wholesale Card Solutions employed claimant as a staff person from approximately the middle of 2017 to May 22, 2018.

(2) The employer expected its employees to be honest when communicating with it about work related matters. Claimant was aware of and understood the employer's expectations.

(3) During the last two months of his employment, claimant sent an erroneous invoice to a customer, even though sending any invoice was outside of his job duties, which caused the employer a significant problem. He also deleted approximately 800 current and valid customer contacts from the employer's database after he was instructed to review the database and delete only outdated and duplicate customer contacts. He also refunded several customer's charges without authorization to do so which cost the employer revenue.

(4) On May 21, 2018, the employer's owner confronted claimant about his poor job performance over the prior two months in relation to his erroneous invoicing, database deletions and customer charge refunding. Claimant explained that he was experiencing personal problems concerning a relationship, finances and a pet that were causing him significant stress and insomnia, and suggested that he might be too stressed to perform his job adequately. They then discussed his job status, with the owner inquiring if claimant was quitting and claimant inquiring if he was being fired. Claimant responded that he did not want to quit and the owner responded that claimant was not being fired and that if she ever was to fire him, he would be well aware of that outcome.

(5) On May 22, 2018, the owner first learned about an “upside down” American Express account that should have been profitable but was not because it had been set up improperly with the employer’s bank. When the owner discovered the problem, she checked the transaction notes within the employer’s computer system and learned that there were no notes, which was a violation of its protocol. The owner then contacted the bank which had notes indicating that claimant had set up the account on February 1, 2018. When the owner inquired about the account with claimant, he stated he had no recollection of the transaction and suggested that a coworker, who was no longer working for the employer, had set up the account and had failed to enter the notes. The owner then confronted claimant with the information she had learned from the bank, after which claimant accepted responsibility for the erroneous transaction and explained that he must have forgotten to enter the required notes in the employer’s system. The owner concluded claimant had been intentionally dishonest with her and terminated his employment for that reason.

CONCLUSIONS AND REASONS: We agree with the ALJ. 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 the 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 the 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 has the burden to establish misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

At hearing, the employer’s owner made it clear that she discharged claimant for his apparent dishonesty on May 22, 2018 based on his initial denial that he had set up the American Express account in question with the bank on February 1, 2018 and failed to enter account notes in their system as expected. Audio Record ~ 24:45 to 26:45. However, claimant first told her that he had no recollection of the transaction and only suggested that it may have been the identified coworker. At hearing, claimant denied that he had been intentionally dishonest about the account matter and admitted that after he was confronted with the bank information, he agreed with the employer that it must have been him that had erroneously set up the account and failed to enter the account terms into the employer’s computer system. Audio Record ~ 37:45 to 40:45.

Moreover, after the owner disclosed to the ALJ that the coworker claimant had initially blamed was still employed on February 1, 2018, the ALJ asked her, “Is it possible that instead of lying...that claimant could have made an honest mistake in attributing [the account setup to the coworker]?” to which the owner eventually responded, “Sure.” Audio Record ~ 33:00 to 34:25. On this record, the evidence that claimant was intentionally dishonest when questioned about the account in question on May 22, 2018 was no more than equally balanced. Accordingly, we agree with the ALJ that the employer failed to meet its burden to show that claimant willfully or with wanton negligence violated its expectation that claimant be honest when communicating about work-related matters.

The employer discharged claimant, but not for misconduct under ORS 657.176(2)(a), and claimant is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Order No. 18-UI-113095 is affirmed.

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

DATE of Service: September 5, 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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