

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0766

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 151050). Claimant filed a timely request for hearing. On July 12, 2018, ALJ Frank conducted a hearing, and on July 20, 2018 issued Order No. 18-UI-113519, concluding that claimant's discharge was not for misconduct. On August 6, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. The employer submitted written argument with its application for review but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the argument when reaching this decision. Even if EAB considered the employer's written argument, however, the outcome of this decision would remain the same for the reasons state herein.

FINDINGS OF FACT: (1) Sykes Enterprises Inc. employed claimant as a customer service agent from February 20, 2017 to May 26, 2018.

(2) The employer expected its customer service agents to verify a customer/caller's identity by asking the customer to pronounce the customer's full name. Claimant understood that expectation. If the customer instead spelled the customer's name, the employer expected its customer service agents to require the customer to also pronounce it. Claimant did not understand that expectation, and believed that the customer spelling the customer's name was sufficient to verify the customer's identity.

(3) On May 25, 2018, claimant asked a customer to pronounce his full name in order to verify the customer's identity. The customer instead spelled his full name, and claimant did not require him to also pronounce it. The employer discharged claimant for failing to require the customer to pronounce his full name.

CONCLUSIONS AND REASONS: 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. 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

In the present case, the employer discharged claimant for failing to verify a customer's identity on May 25, 2018 by requiring the customer to pronounce his full name. However, claimant asked the customer to pronounce his name, and the record fails to show that he knew or should have known from the employer's policies, or through prior training, experience or warnings, that when the customer instead spelled his name, he was expected to require the customer to also pronounce it. The record instead shows that claimant sincerely believed that the customer spelling his name was sufficient to verify the customer's identity. The employer therefore failed to establish that claimant's conduct was a willful or wantonly negligent violation of the employer's expectations, and not the result of a good faith error in his understanding of those expectations.

We therefore conclude that claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Order No. 18-UI-113519 is affirmed.

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

DATE of Service: September 7, 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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