

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0058

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 9, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 130738). The employer filed a timely request for hearing. On December 9, 2013, ALJ Menegat conducted a hearing, and on December 20, 2013 issued Hearing Decision 13-UI-06930, affirming the Department's decision. On January 9, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments. In its argument, the employer asserted that claimant should be disqualified from receiving benefits because his acts made a continued employment relationship impossible, and therefore exceeded mere poor judgment. *See* OAR 471-030-0038(1)(d)(D) (August 3, 2011). However, a claimant cannot exercise poor judgment, let alone exceed mere poor judgment, unless the act involves a decision to willfully violate the employer's reasonable standards of behavior, or a conscious decision to take action that results in a wantonly negligent violation of those reasonable standards of behavior. *See* OAR 471-030-0038(1)(d)(C). Thus, at the very least, the claimant must, with indifference to the consequences of his actions, have consciously engaged in conduct he knew or should have known would probably result in a violation the employer's reasonable expectations. *See* OAR 471-030-0038(1)(c). We agree with the ALJ that the employer failed to meet its burden of proof on that issue. Thus, whether claimant's acts made a continued employment relationship impossible is not material to whether he is disqualified from the receipt of benefits.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 13-UI-06930 is affirmed.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating.

DATE of Service: February 4, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.