

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0218

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 21, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision #104626). The employer filed a timely request for hearing. On January 27, 2014, ALJ Sime conducted a hearing, and on January 30, 2014 issued Hearing Decision 14-UI-08748, affirming the Department's decision. On January 31, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Jackson County employed claimant from June 12, 2006 to September 25, 2013 as a property appraiser.

(2) The employer expected claimant to conduct himself in a professional, cooperative and courteous manner at work. The employer also expected claimant to provide honest and accurate information during disciplinary investigations. Claimant understood those expectations.

(3) On September 16, 2013, claimant attended a Tax Roll Correction (TRC) committee meeting. At that meeting, claimant presented two accounts for consideration by the committee. Claimant disagreed with the committee's method of evaluating the accounts, and left the meeting. After he left the meeting, claimant made statements to a coworker criticizing the competence of two of the committee members in the meeting. The coworker reported the conversation to the employer's operations manager. The coworker reported that claimant had said the committee members were "self-pontificating," and that claimant said, "You have to see what it's going to look like with [that committee member] as my lead." Exhibit 1.

(4) On September 17, 2013, the operations manager met with claimant to investigate claimant's conduct and statements during and after the September 16, 2013 TRC committee meeting. The manager asked claimant if he had made the comments the coworker had reported. Claimant denied having used the

word, “self-pontificating.” Claimant also denied having said, “You have to see what it’s going to look like with [that committee member] as my lead.”

(5) On September 23, 2013, the employer held a pre-disciplinary meeting regarding claimant’s conduct during and after the September 16, 2013 meeting. Claimant again denied having used the specific language the coworker reported to the manager. Claimant explained he had complained to a coworker about a committee member “going off on a philosophical tangent,” and about working with a particular committee member. Exhibit 1.

(6) On September 25, 2013, the employer discharged claimant because it concluded claimant had responded dishonestly to the employer’s questions during its September 17, 2013 investigation.

**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. OAR 471-030-0038(3)(a) (August 3, 2011) 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 the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer had a right to expect claimant to provide honest and accurate information during disciplinary investigations. Claimant understood that expectation. It is undisputed that claimant’s manager asked him on September 17 and 23, 2013 if he had made specific statements about two committee members. Claimant consistently denied that he made those specific statements. However, the employer argued that, on September 23, claimant tacitly admitted to making the statements when he admitted to having made other critical remarks about the committee members. Exhibit 1. Claimant testified at hearing that he did not intentionally mislead the employer, but that he denied having made certain statements only because he did not make the statements. In addition, claimant provided the employer with additional detail about his conduct when asked to do so. Transcript at 20 to 24. The employer failed to show that, more likely than not, claimant was dishonest when he denied having made comments he did not make. Claimant did not willfully or with wanton negligence violate the employer’s expectation that he be honest during disciplinary investigations.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-09487 is affirmed.

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

**DATE of Service: March 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.