

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0272

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 25, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #151403). Claimant filed a timely request for hearing. On January 22, 2014, ALJ Triana conducted a hearing, and on January 29, 2014 issued Hearing Decision 14-UI-09418, concluding the employer discharged claimant, but not for misconduct. On February 18, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) JP Morgan Chase Bank employed claimant from October 13, 2008 to November 6, 2013 as a personal banker.

(2) The employer expected its employees to be good stewards of its customers' confidential information. To maintain an account holder's confidentiality, the employer required its personal bankers to identify the customer to ensure they were an account holder before giving them information about that account. Claimant understood that policy.

(3) On or about October 4, 2013, claimant was assisting customers during at busy time at the bank. He met with a customer who asked to close a line of credit account. The customer showed claimant a statement from the account. Claimant asked the customer for her photo identification, and as she handed her identification to claimant, the customer began asking questions about the bank's policies about closing accounts. Claimant glanced at the identification as he set it down on his desk, and began explaining the bank's policies to the customer. Claimant opened the account in his computer using the account number on the statement, and began to answer the customer's questions about the specific account. He forgot to verify that the identification matched a name on the account. The account had a

zero balance, and the customer paid the \$45 processing fee to close the account. The customer signed the account closure request form. The bank does not typically verify signatures on account closure request forms. Claimant did not know the customer was not the account holder, and was not authorized to act on the account or receive information about it.

(4) On October 14, 2013, the account holder contacted the employer's bank to inquire why the bank had closed her account. The account holder had sent her sister to the bank to pay the balance on the line of credit, but she was not authorized to close the account.

(5) Claimant did not know he had made a mistake until the account holder contacted the employer's bank.

(6) Claimant's manager told the employer's human resources department about the customer's complaint. On November 6, 2013, the employer discharged claimant because he completed a transaction for a person who was not a signer for the account.

(7) Claimant had not received any warnings or discipline for any other violations during his employment.

**CONCLUSIONS AND REASONS:** We agree with 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 evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant for failing to verify a customer was authorized to close an account before he assisted the customer with closing the account. At hearing, claimant testified that once he began answering the customer's questions, he "made the mistake of getting lost in explaining [the policies] to the customer" and "completely forgot to go back" and verify the customer was authorized to close the account. Audio Record ~ 21:01 to 21:07 and 23:16 to 23:30. He testified further that he did not do it on purpose, and that it was a "mistake," and that "it completely slipped his mind" to go back and check the identification when he began explaining the policies. Audio Record ~ 21:09 to 21:19 and 22:16 to 22:18. Claimant's unrefuted testimony shows he did not consciously neglect to confirm the customer's identity, or consciously engage in other conduct he knew or should have known would probably result in his failure to do so. Claimant's failure to complete the verification process after he became distracted by the customer's questions was careless, arguably negligent, but it was not willful, or wantonly negligent as defined under OAR 471-030-0038(1)(c).

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

**DECISION:** Hearing Decision 14-UI-09418 is affirmed.

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

**DATE of Service:** March 11, 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>.

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