

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0366

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 140548). The employer filed a timely request for hearing. On February 24, 2014, ALJ Logan conducted a hearing, and on March 3, 2014 issued Hearing Decision 14-UI-11483, reversing the Department's decision. On March 5, 2013, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) American Red Cross employed claimant from February 27, 2006 to December 5, 2013, last as a team supervisor.

(2) The employer allowed its team supervisors to use a company credit card to purchase a meal only if their work required them to travel 50 miles or more from the employer's office in Portland, Oregon. If a team supervisor accidentally used the credit card to purchase meal when their work required them to travel less than 50 miles, the employer expected the team supervisor to reimburse the employer.

(3) Claimant mistakenly believed she was allowed to use the employer's credit card to purchase a meal only if her work required her to travel 60 minutes or more. She understood that if she accidentally used the credit card to purchase a meal when her work required her to travel less than 60 minutes, she was expected to reimburse the employer.

(4) In 2013, claimant sometimes deliberately used the employer's credit card to purchase meals when her work required her to travel less than 50 miles from the employer's office, and for less than 60 minutes. Claimant knew doing so probably violated the employer's expectations.

(5) The employer discharged claimant, in part, for repeatedly using its credit card to purchase a meal when her work required her to travel less than 50 miles from the employer's office, and for less than 60 minutes.

**CONCLUSIONS AND REASONS:** The employer discharged claimant 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). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had a right to prohibit its team supervisors from using its credit card to purchase a meal when their work required them to travel less than 50 miles. At hearing, claimant asserted that she believed she was allowed to use the credit card to purchase a meal when her work required her to travel, and that she was expected to reimburse the employer if she was required to travel less than 60 minutes. Transcript at 23. However, claimant's own testimony demonstrated she understood that she was prohibited from deliberately using the credit card to purchase a meal when her work required her to travel less than 60 minutes, and that she was expected to reimburse the employer when she "accidentally" did so. Transcript at 40. Although claimant characterized her deliberate use of the employer's credit card when she forgot her own credit card as "accidental,"<sup>1</sup> we find it likely that claimant knew her conduct probably violated the employer's expectations. Claimant's conduct therefore was, at best, wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. An act is isolated only if the exercise of poor judgment is a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). In 2013, claimant repeatedly used the employer's credit card to purchase a meal knowing that her conduct probably violated the employer's expectations. Claimant's exercise of poor judgment therefore was a repeated act, and not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error. Claimant knew using the employer's credit card to purchase a meal when her work required her to travel less than 60 minutes probably violated the employer's expectations. Claimant's conduct therefore was not the result of a good faith error in her understanding of those expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-11483 is affirmed.

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<sup>1</sup> Transcript at 41.

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

**DATE of Service: March 25, 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.