

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0392

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 13, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #101033). Claimant filed a timely request for hearing. On February 13, 2014, ALJ Menegat conducted a hearing, and on February 21, 2014 issued Hearing Decision 14-UI-10819, concluding the employer discharged claimant, but not for misconduct. On March 13, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. We considered the entire hearing record and the employer's written argument.

**FINDINGS OF FACT:** (1) JP Morgan Chase Bank employed claimant from March 7, 2008 to November 21, 2013. Claimant worked as an assistant branch manager when his employment ended.

(2) The employer expected each employee assigned with a cash box to place all cash into their cash box at the end of the day, and transfer the cash box from the teller station and into the cash vault. Claimant understood that expectation.

(3) On November 12, 2013, claimant was using two cash drawers. He kept the main supply of cash in one drawer, and the excess cash in another. At the end of the night, claimant removed the cash from the drawer containing the main supply of cash, but forgot to take the cash from the excess cash drawer. In doing so, he failed to put all the cash in the vault, and left cash out of the vault overnight.

(4) Claimant completed a daily checklist on a daily basis. The checklist included the duty to check his cash drawer. Another employee checked the drawers at the end of the day as part of closing procedures. On November 12, 2013, claimant was not the employee responsible for conducting the closing check of the drawers.

(5) On November 13, 2013, a teller found cash had been left in claimant's cash drawer overnight.

(6) On November 21, 2013, the employer discharged claimant for failure to follow bank security and cash control guidelines.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude the employer discharged claimant, 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 had 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 follow its bank security and cash control guidelines. Specifically, claimant left cash out of the cash vault, in a cash drawer, overnight. Claimant testified that he "forgot" to take the cash from one of the two drawers he was using. Transcript at 18. He completed the daily checklist reminding him to secure his cash box, but did not realize he had forgotten the cash from the second cash drawer. Claimant was not responsible for the final closing check of the cash drawers on November 12, 2013. Apparently, that employee also forgot to check claimant's cash drawer. The record fails to show that claimant willfully disregarded the employer's cash control guidelines. Nor does the record show that claimant consciously engaged in conduct that he knew or should have known would probably result in a violation of the employer's cash control guidelines. Although claimant may have been negligent in failing to remove the cash from one of his teller drawers, absent evidence that claimant was conscious of his conduct, his mistake was not wantonly negligent.

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

**DECISION:** Hearing Decision 14-UI-10819 is affirmed.

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

**DATE of Service:** March 31, 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.