

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0662**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 152748). The employer filed a timely request for hearing. On March 31, 2014, ALJ Murdock conducted a hearing, and on April 2, 2014 issued Hearing Decision 14-UI-13987, affirming the Department's decision. On April 22, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) JP Morgan Chase Bank employed claimant as a bank teller from March 9, 2009 until January 15, 2014.

(2) The employer expected claimant to verify the identity of individuals who presented transactions on accounts at the bank. If the funds involved in the transaction were over the teller's cash limits, the employer recommended that the teller obtain supervisor's authorization before proceeding with the transaction, but did not prohibit the teller from overriding the system's requirement for supervisory approval if the teller had override authority. If a teller exercised override authority to continue with a transaction over the teller's limits, the employer recommended that the teller require the individual to swipe his debit card to verify his identity as the account holder, and if that was not possible, the employer recommended that the teller compare the identification presented by the individual with the identification that the account holder had presented when he opened the account and also compare the signature on the particular transaction documents with the signature that the bank had on file for the account holder. If, after taking these steps, the teller remained suspicious about the individual's authority to engage in a transaction on the account, the employer recommended that the teller contact the bank's fraud hotline. Claimant did not receive any formal training on the employer's expectations or recommendations and was not aware of them.

(3) Sometime before 2014, the then manager at claimant's bank branch gave claimant authority to override the need for a supervisor's approval on transactions that exceeded her approved limit of \$5,000. The manager gave claimant this authority because he was absent one day, and, in his absence, the branch had no assistant manager to give supervisory approval. The manager did not train claimant and what she should do in particular transactions before exercising override authority. The manager told claimant "your main thing is to verify that the [customer's] ID has the correct name and birthday and [is from] the right state." Audio at ~21:40. The manager told claimant that if "you feel it's [the person or the transaction is] suspicious, take more steps" to verify the customer's identity. Audio at ~21:40.

(4) On December 4, 2013, when claimant was working at the drive-through window, an individual arrived who wanted to withdraw cash from an account and also to withdraw funds to purchase a cashier's check. The two withdrawals totaled \$8,590. Claimant verified that the name, date of birth and issuing state on the individual's driver's license matched the information the employer had on record for the customer. Nothing in the individual's behavior or about the transaction seemed suspicious to claimant. When claimant entered the transaction into the employer's system, a message alerted her that the transaction was over her monetary limit and was "different or unusual" activity for the particular account involved. Audio at ~10:11. Because the transaction did not appear suspicious to her and she had verified the individual's identity as she understood her responsibilities, claimant exercised her override authority and completed the transaction. The individual was not the holder of the account from which the funds had been withdrawn, the transaction was fraudulent and the employer sustained a loss of \$5,950.

(5) On January 15, 2014, the employer discharged claimant for failing to follow its identification procedures before completing the transaction on December 4, 2013. The employer decided that discharge was appropriate because its policies recommended discharge when an employee's behavior caused a loss equal to or exceeding \$5,000 to the employer.

**CONCLUSIONS AND REASONS:** 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. The employer carries the burden to establish claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer contended at hearing that in the transaction she handled on December 4, 2013, claimant should have taken additional steps to verify that the individual who was seeking to withdraw funds was the account holder before releasing funds from the account. Audio at ~6:40, ~10:11. Claimant disputed the employer's contention that she had received training on proper verification procedures or otherwise was aware of them and stated that, in that December 4, 2013 transaction, she had followed the steps told to her by her previous manager before completing the transaction. Audio at ~15:41, 21:40, ~22:12, ~23:31, ~26:05. Claimant's testimony appeared sincere and believable and there is no reason in the record to believe the testimony of the employer's witness over claimant's testimony. In a discharge case, when the evidence on a disputed issue is evenly balanced, the uncertainty must be resolved against the

employer, who is the party that carries the burden of proof in a discharge case. *See Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). More likely than not, claimant did not receive any training about the employer's expectations other than the statements made to her when the manager gave her override authority. Since claimant followed all the appropriate identification steps in which she had been instructed, and did not have the suspicions that would have required her to take additional verification steps, claimant did not violate the employer's standards as she reasonably understood them by the manner in which she handled the December 4, 2013 transaction. Accordingly, the employer did not meet its burden to show claimant engaged in misconduct.

The employer discharged claimant but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 14-UI-13987 is affirmed.

Susan Rossiter and Tony Corcoran;  
D. E. Larson and J. S. Cromwell, *pro tempore*, not participating.

**DATE of Service:** May 28, 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.