

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0673

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 100800). Claimant filed a timely request for hearing. On April 8, 2014, ALJ Hoyer conducted a hearing, and on April 17, 2014 issued Hearing Decision 14-UI-15469, affirming the Department's decision. On April 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Home Care Workers employed claimant as a caregiver for its client from December 20, 2011 to November 30, 2013.

(2) The Home Care Worker program was administered by the Oregon Department of Human Services. Each home care worker in that program was required to obtain and maintain a home care provider number. To maintain her home care provider number, claimant had to submit to a renewal process including a criminal background check every two years.

(3) Claimant's home care provider number was scheduled to expire on November 30, 2013. On October 7, 2013, the employer first provided claimant with a form she was to complete and submit as part of the renewal process. Claimant did not submit the completed form.

(4) On November 22, 2013, the employer left a phone message for claimant stating that it had not yet received claimant's paperwork, but that claimant could complete the form online to expedite the process. On November 30, 2013, claimant unsuccessfully attempted to complete the renewal process online. Claimant called the employer concerning her problem. The employer instructed claimant that she was required to submit additional forms to complete the renewal process.

(5) On November 30, 2013, claimant's home care worker provider number expired, and the employer discharged claimant for failing to renew the provider number it required her to maintain as a condition of employment. As of the date of the hearing, April 8, 2014, claimant had never completed the renewal process or submitted all the paperwork necessary to reapply for a provider number.

**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.<sup>1</sup>

The employer had the right to expect claimant to maintain her home care worker provider number as a condition of maintaining her employment. Claimant was informed of that expectation from the outset, and knew or should have known that failing to maintain her home care worker provider number would violate the employer's expectations.

Claimant knowingly failed to maintain or renew her home care worker provider number, despite having been advised to do so, provided with the necessary paperwork, given a reminder phone call, and offered an extension of time to obtain her renewal. Because claimant consciously failed to act in accordance with the employer's reasonable expectation, claimant's discharge was for engaging in wantonly negligent conduct.

Although some wantonly negligent conduct, if isolated, is not considered misconduct, claimant's conduct is not subject to that exception. OAR 471-030-0038(1)(d)(D) provides that conduct that makes a continued employment relationship impossible exceeds mere poor judgment and cannot be excused, even if the conduct was isolated. In this case, the employer required employees to maintain the home care worker provider numbers as a condition of continued employment. Claimant's failure to satisfy that requirement made it impossible for the employer to continue to employ her. Claimant's conduct therefore exceeded mere poor judgment and cannot be excused.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation until she has earned four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 14-UI-15469 is affirmed.

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<sup>1</sup> OAR 471-030-0038(3)(c) is inapplicable in this matter, as it applies only to licenses and other certifications necessary to an *occupation*, not a particular job. Here, while Home Care Worker-employed caregivers were required to have a home care worker provider number, the occupation of caregiver did not.

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

**DATE of Service: May 22, 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.