

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0924

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct connected with work (decision # 153732). Claimant filed a timely request for hearing. On April 30, 2014, ALJ Vincent conducted a hearing, and on May 7, 2014 issued Hearing Decision 14-UI-17024, affirming the Department's decision. On May 27, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**FINDINGS OF FACT:** (1) Providence Health employed claimant from August 17, 2009 to March 7, 2014 as a monitor technician.

(2) The employer expected employees to exhibit integrity and refrain from being dishonest at work, including refraining from falsifying documents. Claimant understood the employer's expectations.

(3) On February 11, 2014, claimant submitted a payroll advance request for \$1,600. The employer required an employee requesting an advance to obtain their supervisor's signature on the payroll advance request form before submitting it to the payroll department. Claimant's supervisor reviewed and signed claimant's payroll advance request form. After her supervisor signed the form, claimant decided she did not need the full amount of the request, so changed the amount to \$1,000, submitted the request to the payroll department, and received a payroll advance of \$1,000.

(4) On March 5, 2014, claimant decided she needed the additional \$600 from the payroll advance request. Claimant used the completed form from the February 11, 2014 payroll advance request, containing her supervisor's signature, to request the second payroll advance. Claimant changed the date to March 5, 2014, changed the amount to \$600, and wrote "Second Request" on the form.

(5) Claimant attempted to find her supervisor to obtain her signature before she submitted the form, but was unable to do so. Claimant called and told a payroll representative that she was submitting a payroll advance request for an additional \$600. Claimant sent the form to the payroll department, and received a payroll advance of \$550, the amount she had earned as of that date in the pay period.

(6) On March 6, 2014, a payroll department representative called claimant's supervisor because there was an error on the March 5 advance request form. The supervisor knew she had not signed claimant's March 5 payroll advance request.

(7) On March 7, 2014, the employer discharged claimant for falsifying a workplace document.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that the employer discharged claimant for an isolated instance of poor judgment, and not 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).

In Hearing Decision 14-UI-17024, the ALJ found that claimant's act of misrepresenting that her advance request form was properly signed was a willful violation of the employer's reasonable expectation that she act honestly.<sup>1</sup> We conclude that claimant's conduct in the final incident was, at best, wantonly negligent, because claimant knew or should have known submitting a form that misrepresented her supervisor's signature would probably result in a violation of the employer's expectation that claimant refrain from falsifying work-related documents. However, the ALJ also found that claimant's conduct was not excusable as an isolated instance of poor judgment because it was a dishonest act and "the impact of a dishonest act upon an employment relationship is such that even a single dishonest act can exceed mere poor judgment by causing a breach of trust in the employment relationship or making a future employment relationship impossible" under OAR 471-030-0038(1)(d)(D).<sup>2</sup> We disagree with the ALJ's conclusion.

---

<sup>1</sup> Hearing Decision 14-UI-17024 at 2.

<sup>2</sup> *Id.* at 2 to 3.

An isolated instance of poor judgment is defined to include “a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior,” which does not exceed mere poor judgment by being unlawful or tantamount to an unlawful act, causing an irreparable breach of trust in the employment relationship, or otherwise make a continued employment relationship impossible. OAR 471-030-0038(1)(d)(A) and (D).

The record does not show claimant’s conduct was more than a single occurrence of wantonly negligent conduct. Claimant’s conduct was not unlawful or tantamount to unlawful conduct because the record does not show that claimant acted with “intent to injure or defraud,” a required element of the crime of forgery, when she submitted the advance request form to the employer.<sup>3</sup> Nor does the record show that, viewed objectively, claimant’s conduct caused an irreparable breach of trust in the employment relationship, or otherwise made a continued employment relationship impossible. Claimant testified at hearing that she made an “error in judgment, thinking that it wasn’t a big deal,” because the supervisor had already approved the additional \$600 in the first payroll advance request, and claimant was merely splitting the payment into two parts. Transcript at 22, 24. Claimant testified further that she “wasn’t trying to be dishonest or deceiving,” and believed payroll would verify the requested amount and pay her only what she was entitled to receive based on her hours worked, and the supervisor would see the form after the payroll department processed the request. Transcript at 22. An examination of claimant’s decision-making process when she submitted the payroll request fails to show that claimant intended to commit a dishonest act such that a continued employment relationship was impossible.

The employer therefore discharged claimant for an isolated instance of poor judgment, and not misconduct. Accordingly, the discharge was not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 14-UI-17024 is set aside, as outlined above.

Tony Corcoran and J. S. Cromwell;  
Susan Rossiter, not participating.

**DATE of Service:** July 3, 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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

---

<sup>3</sup> ORS 165.007(1) provides, in relevant part, that a person commits the crime of forgery in the second degree if, with intent to injure defraud, the person falsely makes, completes or alters a written instrument.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.