

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0944

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 81846). Claimant filed a timely request for hearing. On May 15, 2014, ALJ Sime conducted a hearing, and on May 19, 2014, issued Hearing Decision 14-UI-17928, affirming the administrative decision. On June 2, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record before the ALJ.

**FINDINGS OF FACT:** (1) Well Fargo Bank employed claimant from March 7, 2007 through March 18, 2014, last as a Financial Crime Specialist II.

(2) Financial Crime Specialists investigate fraudulent bank transactions, and are expected to complete, on average, a minimum of four cases per hour. The actual number of cases a Financial Crime Specialist completes each hour varies, however, depending on the complexity of the case. Financial Crime Specialists clock into work using Time Tracker, an electronic time clock. Work on cases is performed through the Universal Workstation case management system, which records the cases on which employees are working, and data such as the time an employee's work begins and ends on a case. Work not directly related to cases, such as checking emails, reading newsletters, and meeting with supervisors or other employees, is considered exception time. An employee must obtain permission from a supervisor to use any substantial amount of exception time, and must record use of exception time on a special computer system. The employer expects that employees will accurately record the hours worked, and the type of work performed. Claimant knew and understood these expectations.

(3) In October 2013, claimant was suffering from extreme postpartum depression, and obsessive compulsive and anxiety disorders. To accommodate claimant's condition, the employer permitted claimant to work at home and telecommute.

(4) Before claimant began telecommuting, she typically began her work day by performing non-case related work for thirty minutes to one hour. During that time, claimant read and responded to emails, read other employer publications, and reviewed her pending cases. After claimant began telecommuting, she spent more time in these work activities unrelated to her case work. Due to her mental health issues, claimant had difficulty concentrating and would "just kind of get carried away" in non-case related work and "lose track of time." Transcript at 45-56. Claimant never engaged in any personal activities, such as caring for her child or checking her personal email account, during her scheduled work hours. Claimant did not request exception time for the non-case related work she performed because she was concerned that she would be viewed as a bad employee if she did.

(5) Because of her mental health issues, claimant found she was working far less proficiently than she had in the past. Claimant wanted to maintain an acceptable performance level and meet the employer's performance expectations; to do so, she worked on exactly four cases per hour. At times, claimant was unable to complete work on all her cases during her scheduled work hours of 6:30 a.m. to 3:30 p.m. On those occasions, claimant would log on to the Universal Workstation to complete her case work but not clock into the Time Tracker system.

(6) While preparing performance reviews in January 2014, claimant's supervisor noticed that claimant reported work on exactly four cases each hour. Because this was an unusual pattern for a Financial Crime Specialist, and because claimant was not responding promptly to the supervisor's instant messages, claimant's supervisor had claimant's time and case records audited for the period from November 26, 2013 through March 7, 2014.

(7) The audit found that claimant was paid for 513.25 hours of work, as recorded in the time tracker system, but had performed only 366 hours of case work, as recorded in the Universal Workstation system.

(8) On March 18, 2014, the employer discharged claimant for failing to accurately record time worked.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that 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.

The employer discharged claimant for failing to accurately report time worked. A January 2014 audit of showed approximately 147 hours when claimant clocked into work for the employer but was not performing her primary job duties – working on bank fraud cases -- as shown by records in the computer system. The ALJ concluded that claimant’s “failure to account for the differences in time between her clock-in times and the times she accessed the employer’s universal work station system was a wantonly negligent violation of the employer’s expectations.” We disagree.

At hearing, claimant explained that the difference between the number of hours she worked for the employer (as shown by her Time Tracker hours) and the number of hours she performed case work (as shown by her Universal Workstation hours) was due to the many hours she spent performing non-case related work – exception time. Claimant knew and understood that the employer expected her to request use of exception time and record this time through a special computer system, but failed to do so. To determine that claimant’s actions constituted a willful disregard of the employer’s expectation, however, we must find that claimant had the mental capacity to consider the effects of her action. Because of claimant’s mental health issues – extreme post-partum depression, and obsessive compulsive and anxiety issues – she lacked the necessary mental capacity to either willfully or with wanton negligence disregard the employer’s reasonable expectation that she request and accurately report exception time. Accordingly, we conclude that the employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

**DECISION:** Hearing Decision 14-UI-17928 is set aside, as outlined above.

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

**DATE of Service:** July 9, 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.

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