

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0956

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 145743). The employer filed a timely request for hearing. On May 12, 2014, ALJ Holmes-Swanson conducted a hearing, and on May 14, 2014 issued Hearing Decision 14-UI-17550, affirming the Department's decision. On June 3, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) JP Morgan Chase Bank employed claimant from April 4, 1995 to February 28, 2014, last as a senior teller.

(2) The employer expected tellers to scan ledger tickets into the employer's computer system to document outgoing cash shipments. Claimant understood that expectation. On February 19, 2014, claimant forgot to scan a general ledger ticket for an outgoing cash shipment.

(3) On February 20, 2014, claimant misspelled a customer's name on a cashier's check. When the customer noticed the error and returned, claimant provided him a corrected cashier's check. Claimant was expected to reverse the transaction for the original cashier's check in the employer's computer system. However, claimant failed to do so.

(4) The employer discharged claimant for her errors on February 19 and 20, 2014.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that claimant's discharge was 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 has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

In the present case, the employer discharged claimant for violating its expectations by forgetting to scan a general ledger ticket for an outgoing cash shipment, misspelling a customer's name on a cashier's check, and failing to reverse the transaction on the original check when providing the customer a corrected check. However, the employer failed to show that claimant consciously forgot to scan the general ledger ticket, consciously misspelled the customer's name on the cashier's check, or consciously failed to reverse the transaction on that check. Nor did the employer show that claimant consciously engaged in other conduct she knew or should have known would probably result in those errors. Claimant may have been careless, arguably negligent, but the employer failed to establish that she acted willfully, or that her conduct rose to the level of *wanton* negligence as defined under OAR 471-030-0038(1)(c).

We therefore conclude that claimant's discharge was not for misconduct. Claimant is not disqualified from the receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 14-UI-17550 is affirmed.

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

**DATE of Service:** July 10, 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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