

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1224

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 125015). The employer filed a timely request for hearing. On July 8, 2014, ALJ Murdock conducted a hearing, and on July 11, 2014 issued Hearing Decision 14-UI-21367, concluding the employer discharged claimant for misconduct. On July 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FININDINGS OF FACT:** (1) Confederated Tribes of Grand Ronde employed claimant as an adult foster care facility caregiver from April 10, 2012 to June 4, 2014.

(2) The employer expected its adult foster care facility caregivers to maintain the authority necessary to perform their occupation in Oregon, which required the ability to pass a criminal background check by the state. Claimant understood the employer's expectations.

(3) In April 2014, claimant was convicted of theft in the second degree in Oregon, and therefore failed a criminal background test conducted by the State of Oregon. The employer discharged claimant for failing to maintain the authority to work as an adult foster care facility caregiver in Oregon.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that 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)(c) (August 3, 2011) defines misconduct, in relevant part, as a willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual. 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 had a right to expect claimant to maintain the authority necessary to work as an adult foster care facility caregiver in Oregon. In April 2014, claimant was convicted of theft in the second degree in Oregon, failed a criminal background test conducted by the State of Oregon, and therefore failed to maintain the authority to work as an adult foster care facility caregiver in Oregon. ORS 164.015(1) provides that a person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains or withholds such property from an owner thereof. ORS 164.035(1) provides, in relevant part, that in a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that the defendant was unaware that the property was that of another, or the defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

Claimant's conviction of theft in the second degree shows that, with intent to deprive another of property or to appropriate property to herself or a third person, claimant took, appropriated, obtained or withheld such property from an owner thereof, and did not act under an honest claimant of right. Claimant's conviction therefore establishes that she consciously engaged in conduct she knew or should have would probably result in her inability to pass a criminal background check by the state of Oregon. Claimant's conscious decision to engage in such conduct demonstrated indifference to the consequences of her actions. Her violation of the employer's expectation that she maintain the authority necessary to work as an adult foster care facility caregiver in Oregon therefore was wantonly negligent, and reasonably attributable to her.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 14-UI-21367 is affirmed.

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

**DATE of Service:** August 14, 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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