

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1294

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On August 12, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 134333). The employer filed a request for hearing on February 4, 2014. On March 4, 2014, ALJ Kangas issued Hearing Decision 14-UI-11628, dismissing the employer's request for hearing as untimely, subject to the employer's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed. On March 11, 2014, the Office of Administrative Hearings (OAH) received the employer's response. On April 15, 2014, OAH issued notice of a hearing scheduled for April 28, 2014. On April 28, 2014, ALJ S. Lee conducted a hearing, and on May 9, 2014 issued Hearing Decision 14-UI-17232, allowing the employer's request for hearing, and concluding the employer discharged claimant for misconduct. On May 29, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

On July 7, 2014, EAB issued Appeals Board Decision 2014-EAB-0927, reversing Hearing Decision 14-UI-17232 as unsupported by a complete record, and remanding the matter to OAH. On July 11, 2014, ALJ S. Lee supplemented the record and issued Hearing Decision 14-UI-21286, allowing the employer's request for hearing and concluding the employer discharged claimant for misconduct. On July 31, 2014, claimant filed an application for review of Hearing Decision 14-UI-21286 with EAB.

**FINDINGS OF FACT:** (1) PNC Bank NA employed claimant from December 1, 2008 to July 8, 2013 as a financial manager.

(2) The employer expected claimant to follow its code of ethics requiring employees to refrain from engaging in dishonest acts and making false or misleading reports. Claimant understood the employer expected all the documents he submitted to be true, accurate, and not misleading. In March 2012, claimant was assigned to act as the primary reviewer of account reconciliations in another department, not his own. As primary reviewer, the employer expected claimant to verify the reconciliations were completed, and to review the completed reconciliations, supporting documentation, and applicable aging

schedules, for accuracy before noting in the employer's bank reconciliation system that the reconciliations and review were completed. Claimant received instruction regarding the employer's reconciliation procedures at hire and during a corporate reconciliation training he completed on February 15, 2012. Exhibit 2. Claimant understood the purpose for reviewing reconciliations was to ensure they were complete and accurate.

(3) All the employer's employees had to be covered under the employer's fidelity bond. If the employer believed an employee engaged in a dishonest act, the employee was no longer eligible for coverage under the bond and could not remain at work. Claimant understood the employer's requirement.

(4) Beginning in March 2012, claimant received emails each month from the other department stating the reconciliations were ready for claimant to "sign off" in the employer's database. Transcript at 14. Each month, claimant noted in the employer's database that the reconciliations were completed and that he had reviewed them. Claimant relied on the employees' assertions from the other department that the reconciliations were complete and did not personally verify if the account reconciliations were complete or review them. Claimant knew this conduct violated the employer's expectations.

(5) The monthly account reconciliations for February and March 2013 each contained a handwritten note from a reconciler from the other department stating that the reconciliations were not complete. Exhibit 2. Claimant signed each reconciliation report the same day the reconciler indicated the reconciliations were not complete. Exhibit 2. Claimant's signature indicated the reconciliations were complete. Claimant did not review the reconciliations before he signed them. Claimant knew this conduct violated the employer's expectations.

(6) In April 2013, the employer conducted a routine internal audit, and requested the supporting documentation for certain accounts from the February 2013 reconciliations. Claimant was unable to provide the employer with the information because he had not looked at any of the reconciliations before he noted in the employer's database that the reconciliations had been completed and reviewed.

(7) During its investigation into claimant's failure to review the reconciliations, claimant told the employer he knew he had not performed his duties correctly.

(8) Claimant followed the correct procedures for reviewing reconciliations for his own department. Exhibit 2.

(9) The employer considered claimant's acts of signing off on the reconciliations without having reviewed them as dishonest acts.

(10) On July 8, 2013, the employer discharged claimant for falsifying bank records, and for failing to review the reconciliations and verify they were complete.

(11) On August 30, 2013, the employer sent a request for hearing to OAH by facsimile. The fax transmission was successful.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that the employer filed a timely request for hearing and that it discharged claimant for misconduct.

**Request for Hearing.** Under ORS 657.269, a request for hearing on an administrative decision must be filed within 20 days of the date on which the decision was mailed. The administrative decision was mailed on August 12, 2013. The record shows the employer requested a hearing on August 30, 2013, which was within 20 days of the date on which the administrative decision was mailed. Thus, the employer filed a timely request for hearing.

**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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer reasonably expected claimant to perform his assigned duties according to the employer's procedures. The employer also had the right to expect claimant to be honest in completing documentation of his duties. Claimant testified that he did not verify the reconciliations were complete or review them because he believed the employer expected him to review only the accounts that contained "aging items," and none of the accounts contained aging items. Transcript at 21-22. Claimant testified that he believed the assurances from the other department's reconcilers were sufficient. Transcript at 21-22. We agree with the ALJ that claimant's argument is not persuasive.<sup>1</sup> During the employer's two-month investigation regarding the reconciliations, claimant told the employer he knew he had not performed his duties correctly, and did not assert that he believed he was only to review accounts with aging items. Moreover, the monthly account reconciliation statements for February and March 2013 each contained a handwritten note from a reconciler in the other department stating the reconciliations were not yet complete. Claimant testified that he did not see the notes on the accounts. Transcript at 26. However, the record shows it was more probable than not that claimant saw the notes, and disregarded them. Claimant's signature is near the handwritten notes on the document for each month. *See Exhibit 2.* Claimant's failure to follow the employer's reconciliation procedures, and his falsification of the records for those reconciliations, were willful violations of the employer's expectations.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). To be considered an isolated instance of poor judgment, an act must be a single or infrequent occurrence rather than a repeated act. OAR 471-030-0038(1)(d)(A). Beginning in March 2012, claimant repeatedly failed to follow the employer's procedures regarding reconciliations, and failed to honestly document his work each month until April 2013. Thus, claimant's violations were not a single or infrequent occurrence, and are not excusable as an isolated act of poor judgment. In addition, acts that make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D). Because the employer reasonably believed claimant committed a dishonest act, claimant was no longer eligible to for the employer's bond insurance, making a continued employment relationship impossible.

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<sup>1</sup> *See* Hearing Decision 14-UI-21286 at 6.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). The record fails to show claimant sincerely believed, and had a rational basis for believing, the employer would condone his failure to review the reconciliations and his falsification of bank records.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-21286 is affirmed.

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

**DATE of Service:** September 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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