

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1299

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 92955). The employer filed a timely request for hearing. On July 18, 2014, ALJ Lohr conducted initial and continued hearings, and on July 29, 2014, issued Hearing Decision 14-UI-22429, concluding the employer discharged claimant for misconduct. On July 31, 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.

**FINDINGS OF FACT:** (1) Sunbelt Rentals, Inc. employed claimant as a mechanic and driver from November 19, 2012 to May 14, 2014.

(2) The employer had written policies that prohibited dishonesty regarding work related matters and allowed employees to rent its equipment without charge, provided the equipment was for their personal use and not for the use of friends or family members. Claimant received a copy of the employer's handbook that contained its written policies and was aware of the employer's expectations.

(3) On Thursday, May 8, 2014, the employer permitted claimant to rent a dump trailer from the employer through the weekend at no charge after claimant told the branch manager that he intended to use it at his residence "for his roofers." Transcript at 9. The employer expected claimant to return the trailer, ready for rental by a customer, by the start of business Monday, May 12. When claimant failed to do so, the employer questioned him about the location of the trailer, and claimant disclosed that it was

at his girlfriend's residence. Claimant also said he had used the trailer to roof his girlfriend's garage and to move her possessions to his residence, and that he had intended to pay for the use of the trailer.

(4) The employer concluded claimant had been dishonest with the manager regarding his intended use of the trailer in order to rent it at no charge, and on May 14, 2014, discharged him, in part, for that reason.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. 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 connected with work. 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 discharged claimant, in part, for dishonesty regarding his intended use of the dump trailer. Claimant admitted at hearing that he used and always intended to use the trailer to roof the garage of his girlfriend's residence and then move her possessions. Transcript at 33-34. He also admitted that he did not disclose those intended uses to his manager on May 8. *Id.* He argued that because his girlfriend was his "significant other" he "should [have] be[en] able" to use the trailer at his girlfriend's residence at the employer's discounted rate. Transcript at 36. However, by telling his manager that he intended to use the trailer at his residence "for his roofers" when that was never his intention, claimant demonstrated that he willfully misrepresented his intended use in order to rent it at no charge.

Claimant's willful misrepresentation cannot be excused as an isolated instance of poor judgment or good faith error. For an act to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, we have consistently held that even a single dishonest act, such as claimant's, causes an irreparable breach of trust in the employment relationship, exceeds mere poor judgment and does not fall within the exculpatory provisions of OAR 471-030-0038(3) <sup>1</sup> See, OAR 471-030-0038(1)(d)(D). <sup>2</sup> Nor can claimant's conduct be excused as a good faith error. Claimant did not

---

<sup>1</sup> Examples of single acts of dishonesty that we concluded exceeded mere poor judgment and caused an irreparable breach in the employment relationship include: *Shawn E. Ellis*, (Employment Appeals Board, 2014-EAB-0968, July 22, 2014) (claimant made a single false time card entry); *Preston A. Johnson*, (Employment Appeals Board, 2014-EAB-0377, March 26, 2013) (claimant falsely reported a meeting with a customer that never occurred); *Margaret L. Rayevich*, (Employment Appeals Board, 13-AB-0296, March 13, 2013) (claimant falsified a time record by not logging out of the time system during an hour she was away from the workplace); *Richard L. Thompson*, (Employment Appeals Board, 12-AB-2759, October 31, 2012) (claimant lied to the employer about equipment he had taken home); and *Cassie A. Ortega*, (Employment Appeals Board, 12-AB-2255, September 25, 2012) (claimant lied to the employer about her relationship with an employee whom she supervised).

<sup>2</sup> Under OAR 471-030-0038(1)(d)(D), acts that violate the law, acts that are tantamount to unlawful conduct, and conduct that causes a breach of trust or makes a continued relationship impossible, exceed poor judgment and cannot be excused.

assert, and the record does not show, that he sincerely believed, or had a rational basis for believing, that the employer would condone dishonesty to obtain a discounted rental rate.

The employer discharged claimant for misconduct under ORS 657.176(2) and claimant is disqualified from the receipt of benefits on the basis of his work separation.

**DECISION:** Hearing Decision 14-UI-22429 is affirmed.

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

**DATE of Service:** September 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.

**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.