

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1351

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 13, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 144628). The employer filed a timely request for hearing. On July 17, 2014, ALJ Holmes-Swanson conducted a hearing, and on July 25, 2014, issued Hearing Decision 14-UI-22277, concluding the employer discharged claimant for misconduct. On August 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments to the extent they were based on the record.

**FINDINGS OF FACT:** (1) Clackamas County employed claimant as a mental health therapist from July 1, 2006 to May 13, 2014.

(2) The employer utilized a software system for reporting direct client services that combined word processing and billing functions. The employer expected its mental health therapists to timely prepare a "progress note" for each client session that accurately noted the start and end time of each session, and the service provided during the session. Transcript at 13; Exhibit 1. For a progress note to be complete, the therapist was required to both sign and "final approve" it, but not before the end of the client session. Transcript at 20. To "final approve" a progress note, a therapist had to enter his or her name, select "final approve" and then enter a password. Transcript at 38, 43. Claimant received training and email reminders regarding the employer's progress note procedures and expectations and understood them. Claimant also received two oral reprimands and three work plans based on failures to timely complete her progress notes and understood these employer expectations.

(3) At the end of 2013, the employer received an insurer's audit report regarding claimant's progress notes that showed she often signed them before the end of a client session, resulting in an overpayment that was potentially fraudulent. The employer had a software technician run a report to determine if claimant "final approved" her progress notes before the end of client session, which was not visible from the face of the notes. The data obtained showed that on 235 occasions in 2013, claimant signed and/or "final approved" progress notes either at the end of or prior to the start of the session, resulting in significant overpayments. Exhibit 1.

(4) On February 14, 2014, claimant's supervisor sent a group email to therapists, including claimant, that emphasized the importance of accurately reporting session times on progress notes and completing the notes only when the service was completed. The email stated, "Only when you are completed with your service do you sign and final approve the note." Exhibit 1. The email required therapists to reread the employer's policy regarding "progress note procedure" which claimant did that day. Transcript at 21. On February 19, 2014, claimant attended a staff meeting at which her supervisor clarified the employer expectations referenced in the email. On March 20, 2014, claimant's supervisor told her that her documentation of client sessions would be investigated and directed claimant to "stop completing and final approving progress notes prior to the end of the session." Transcript at 21, 42.

(5) From February 19 to April 4, 2014, claimant signed a progress note before the session was over 44 times and final approved a progress note before the session was over 22 times. From March 25 to April 4, 2014, the employer visually monitored the start and end times of 13 of claimant's client sessions and determined that claimant inaccurately reported the length of the sessions in her notes seven times.

(6) On April 8, 2014, the employer placed claimant on administrative leave pending its determination of claimant's employment status. On April 15, 2014, the employer gave claimant a pre-disciplinary letter that outlined its investigatory findings and proposed discipline of termination. On or about April 21, 2014, the employer received notification from an insurer that payment for claims based on claimant's services after April 14, 2014 would be suspended due to her continuing documentation errors. In a meeting on April 23, 2014, the employer gave claimant the opportunity to present information in mitigation of its proposed discipline. Claimant explained that she "had a difficult time with getting [her] notes done on time", and had been "hyper vigilant" about doing so. Exhibit 1. On May 13, 2014, the employer terminated claimant's employment, in part, for signing and final approving progress notes before the end of the client session between February 19 and April 4, 2014.

**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. 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. 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 signing or final approving multiple progress notes before the end of client sessions between February 19 and April 4, 2014. The employer had the right to expect claimant to follow its policy requiring signing and final approving progress notes only when the session was completed because she received training thereon, had followed the procedure in the past, received her supervisor's February 14 clarifying email, reread the policy that day and attended her supervisor's staff meeting on February 19. Claimant does not dispute she understood the employer's policy, or that, during the period in question, she signed progress notes 44 times and final approved progress notes 22 times before the sessions were over. Transcript at 43-45, 50. She asserts that although she understood that she should not have final approved any note until she was finished with the session, she did not understand that doing so would have significant billing consequences. Written Argument at 4. While that may have been true, it does not change the fact that she violated the employer's policy multiple times during the period in question when she final approved a drafted note before the client session was complete by entering her name, password and then selecting "final approve" on her computer screen. Although claimant argued at hearing that she had nothing of value to gain by these actions, the record shows that in the past, she had been reprimanded and received work plans for failing to timely complete progress notes. In addition, she explained to the employer at her mitigation meeting that she had difficulty getting her notes done on time and had become "hyper vigilant" about doing so. Transcript at 44; Exhibit 1. From those facts, we infer that claimant final approved her notes when she did to ensure they were not completed late.

Claimant also argues that her conduct was caused by a lack of job skills and vision problems. Written Argument at 3. However, the record shows that she was able to and did follow the employer's procedure with regard to some client sessions, indicating that she had the computer skill and sight necessary to consistently follow the employer's expectations had she chosen to do so. More likely than not, claimant's conduct was conscious, demonstrated indifference to the employer's progress note policy was at least wantonly negligent.

Claimant's conduct 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). Claimant's conduct was not isolated and occurred under circumstances that demonstrated conscious indifference to the employer's expectations in favor of her personal concerns. Nor can claimant's conduct be excused as a good faith error. Claimant did not assert, and the record does not show, that she sincerely believed, or had a rational basis for believing, that the employer would condone signing or final approving progress notes before the end of client sessions after the February email and staff meeting.

The employer discharged claimant for misconduct under ORS 657.176(2) and claimant is disqualified from the receipt of benefits until she has earned four times her weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 14-UI-22277 is affirmed.

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

**DATE of Service: September 25, 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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