

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0034

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged for misconduct (decision # 81436). Claimant filed a timely request for hearing. On January 9, 2015, ALJ Kirkwood conducted a hearing, and on January 12, 2015, issued Hearing Decision 15-UI-31643, affirming the Department's decision. On January 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) CSL Plasma, Inc. employed claimant as a donor support technician from March 21, 2011 to October 3, 2014.

(2) The employer expected its employees to obey their supervisor's reasonable instructions and refrain from falsifying business records. The employer also expected its donor support technicians to follow its plasma handling procedures which included measuring the volume of the plasma-filled bottle and writing the technician's initials and "disconnect time", the time the unit was disconnected from a plasma machine, on a preprinted label attached to the bottle. Claimant understood the employer's expectations as a matter of common sense or the result of training. Transcript at 5-6.

(3) On June 1, 2015, claimant brought a plasma-filled bottle to the processing window without the unit's volume, disconnect time or his initials on the bottle. A supervisor instructed him to "reweigh" the unit, which claimant understood to mean measure its volume, and complete the other steps necessary for processing. Exhibit 1. Claimant attempted to walk out of the supervisor's sight, entered a volume of 825 milliliters on the label without actually measuring the unit volume according to procedure because he wanted to do it "quicker" and brought the unit back to the window for processing. Transcript at 26. When the supervisor asked if he had "reweighed" the unit, claimant responded, "yes." Exhibit 1. The supervisor had another technician perform a "reweigh" according to the employer's procedure and the "actual volume" of the unit was 830 milliliters. Exhibit 1. The supervisor reported the incident to the employer which issued claimant a written warning for his conduct.

(4) On September 25, 2014, claimant filled and disconnected a plasma bottle from a machine without writing the disconnect time or his initials on the bottle. The bottle was then delivered to the processing section. When the processing technician brought the missing time and initials to claimant's attention, claimant laughed and told him he "didn't care about the times on the bottle." Exhibit 1. When confronted by a supervisor, claimant asserted he had been joking, did not explain that he had been distracted by a hyperventilating donor and did not complete a report regarding such an incident in accordance with the employer's protocol.

(5) On October 3, 2014, the employer discharged claimant for violating its plasma handling procedure on September 25, 2014.

**CONCLUSIONS AND REASONS:** We agree with the Department and 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. An isolated instance of poor judgment or a good faith error is not misconduct. OAR 471-030-0038(3)(b).

At hearing, claimant asserted that on September 25, an unknown "runner" took the sample to the processing window before he was able to write the disconnect time and his initials on the label because he was assisting an unknown, hyperventilating donor. In Hearing Decision 15-UI-31643, the ALJ "[did] not find claimant's version [of the final incident] credible." Hearing Decision 15-UI-31643 at 3. The record supports the ALJ's implicit determination that claimant was not a credible witness. When confronted by the employer, claimant did not explain that he was assisting a hyperventilating donor that distracted him from writing the disconnect time or his initials on the label. In his October 2 statement regarding the incident, claimant did not offer that explanation for his conduct and at hearing did not dispute that he did not fill out a report regarding the alleged donor incident or that such a report was the employer's protocol for such incidents. Accordingly, on facts in dispute, we based our findings on the employer's evidence. More likely than not, claimant did not write the disconnect time and his initials on the label in question because he wanted to complete the unit as fast as he could, and as he explained to the processing technician, "didn't care about the times on the bottle." Claimant's conscious indifference to the employer's plasma handling procedures was at least wantonly negligent.

Claimant's September 25 conduct cannot be excused as an isolated instance of poor judgment. 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). Claimant willfully disobeyed a supervisor's direction and essentially falsified a business record on June 1, when he wrote a volume on a sample bottle without actually measuring it. Accordingly, claimant's conduct on

September 25 was not a single or infrequent instance of poor judgment. Nor was claimant's September 25 conduct the result of a good faith error. Claimant did not assert or show that he sincerely believed or had a factual basis for believing the employer would tolerate his conscious failure to complete its plasma handling procedures.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

**DECISION:** Hearing Decision 15-UI-31643 is affirmed.

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

**DATE of Service:** March 4, 2015

**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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