

**EMPLOYMENT APPEALS BOARD DECISION**

**2015-EAB-0041**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 130117). Claimant filed a timely request for hearing. On January 5, 2015, ALJ Triana conducted a hearing, and on January 13, 2015 issued Hearing Decision 15-UI-31712, concluding the employer discharged claimant, but not for misconduct. On January 16, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Multnomah County Education Service District employed claimant as an educational staff assistant from January 5, 2009 to October 15, 2014.

(2) The employer discharged claimant for allegedly slapping one of its students on October 6, 2014.

**CONCLUSIONS AND REASONS:** The employer failed to establish that claimant's discharge was not 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant for allegedly slapping one of its students on October 6, 2014. However, the employer presented only hearsay evidence to support that allegation. Exhibit 1. Claimant

denied the allegation under oath,<sup>1</sup> and we find the evidence as to whether she slapped the student equally balanced. Absent a preponderance of evidence showing claimant slapped the student, the employer failed to establish that claimant's discharge was for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-31712 is affirmed.

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

**DATE of Service:** February 25, 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.

**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.

---

<sup>1</sup> Transcript at 18-25.