

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0132**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, but claimant's benefit rights based on wages earned prior to the date of the discharge were not cancelled (decision # 104423). Claimant filed a timely request for hearing. On January 22, 2015, ALJ M. Davis conducted a hearing, and on January 23, 2015 issued Hearing Decision 15-UI-32285, affirming the Department's decision. On February 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument which conceded that he failed to remit funds that he collected from a customer on behalf of the employer on October 7, 2014, when he was aware that the employer expected him to do so when he returned to the workplace on that day and when his supervisor and the department supervisor had asked him to remit those funds to the employer on October 7, 2014, October 15, 2014 and October 17, 2014. While claimant contended in his written argument that his failure to turn those funds over to the employer for three weeks was somehow mitigated because the supervisors never explicitly told him he might be discharged if he withheld those funds for an unreasonable length of time, we have never held that behavior cannot constitute wanton negligence unless a claimant was on notice that he would be discharged for such behavior. Written Argument at 1-2. It is sufficient that claimant withheld those collected funds when he was aware of the employer's expectations to turn over all funds collected on behalf of the employer, as he admitted he was here, and he was also further made aware that the employer expected compliance with its expectations in connection with the actual funds that he had collected on October 7, 2014, as was the case here after the repeated requests that claimant

admitted the supervisors made of him to provide the funds. Audio at ~21:58. Contrary to another position taken in claimant's written argument, that the amount of the funds withheld from the employer was a relatively small sum of money, the applicable regulation, OAR 471-030-0038 (August 3, 2011) does not state that behavior may be excused from constituting willful or wanton negligence based only its allegedly trivial nature. Written Argument at 2. Nor was claimant's further argument, that he "accidentally" spent the customer's funds on October 7, 2014, especially relevant here since it was undisputed that he continued to withhold the collected funds from the employer after his supervisors inquired into payment from him on October 15, 2014 and October 17, 2014 and he admitted that after those inquiries he knew that he should turn those funds over to the employer. Written Argument at 2; Audio at ~ 24:33. Finally, the other contentions made in claimant's written argument, that claimant routinely incurred expenses for which the employer reimbursed him and that the employer allowed him to purchase items from it on an employee account, are also not relevant to the issues in this case, since claimant was aware of the employer's expectations about remitting funds collected from customers at least by the end of the work day, and claimant did not contend that, based on these practices, he sincerely misunderstood the employer's standards for turning over funds collected from customers, especially after the inquiries his supervisors made of him for the funds. We have considered the other aspects of claimant's written argument only to the extent the argument was based on evidence in the hearing record. *See* OAR 471-041-0090 (October 29, 2006). After considering the evidence in the record and claimant's written argument, we agree with the ALJ that claimant's behavior was a wantonly negligent violation of the employers standards that was not excused from constituting misconduct under OAR 471-030-0038(3)(b).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 15-UI-32285 is affirmed.

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

**DATE of Service:** March 26, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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