

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0183**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 74704). Claimant filed a timely request for hearing. On January 22, 2015, ALJ Holmes-Swanson conducted a hearing, and on February 3, 2015, issued Hearing Decision 15-UI-32891, concluding that claimant voluntarily left work without good cause. On February 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Party Time Enterprise, Inc. employed claimant as a full charge bookkeeper from March 17 through March 26, 2014.

(2) The employer's owner hired claimant on the recommendation of an accountant, an independent business person with whom the employer contracted to perform bookkeeping work. The employer is a small business, and the employer's owner expected claimant to perform all the bookkeeping tasks necessary to run the business. These tasks included maintaining accounts payable, preparing profit and loss statements, making deposits, and keeping track of the checking account. The employer's owner also expected that claimant would have experience and expertise in the use of Quickbooks, the accounting software used by the employer. Based on claimant's resume, the accountant believed that claimant had the necessary experience and knowledge to perform the work the employer expected of her.

(3) During the first week of claimant's work for the employer, she was unable to familiarize herself with the employer's accounting system because the accountant had all the employer's records and bookkeeping information at her office. On March 18, 2014, claimant went to the accountant's office and the accountant attempted to show claimant how to prepare accounts payable. Claimant was unable to learn this process, however, because the accountant told claimant she did not have time to explain the procedure to claimant and did most of the work herself. Other than working with the accountant for a

few hours on accounts payable, claimant did no accounting work during her first week of work with the employer.

(3) On March 26, 2014, the accountant came to the employer's office to install Quickbooks in the employer's computer and show claimant how to prepare electronic deposits. This was the first opportunity claimant had to view the employer's Quickbooks records; prior to this date, the accountant had been updating these records and claimant had been unable to access them. Claimant had never made deposits electronically, and found it difficult to understand the accountant's instructions. After working a while with claimant, the accountant left claimant and went to speak to the employer's owner.

(4) The accountant told the employer's owner that she did not believe that claimant had the skills or experience to perform the work the employer expected of her. The employer's owner agreed with the accountant assessment of claimant's abilities; they decided that the accountant would discharge claimant.

(5) After talking to the employer's owner, the accountant returned to the office where claimant was working. Claimant asked for additional assistance in preparing deposits. The accountant told claimant that "you obviously don't know what you're doing, you've obviously never used Quickbooks before, and you obviously misrepresented yourself on the information that you gave us." Transcript at 26. Claimant felt that the accountant was speaking to her in a disrespectful manner; she told the accountant that she did not think the job would work out for her. Claimant left the employer's office and never returned.

**CONCLUSION AND REASONS:** We conclude that the employer discharged claimant, but not for misconduct.

We first consider the nature of the work separation at issue. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Here, the employer's owner agreed that claimant should be discharged on March 26, 2014. Although claimant walked off the job, she did so only after the employer's owner decided that the accountant would discharge claimant, and only after the accountant had started to tell claimant that she was discharged. We find that the record clearly demonstrates that the employer was unwilling to allow claimant to work for any additional period of time and conclude that the work separation is a discharge.

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. Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b) (August 3, 2011).

The employer discharged claimant because she demonstrated that she did not have the skills or experience necessary to perform the work expected of her – that of a full service bookkeeper. Inefficiency of this type is specifically excluded from the definition of misconduct. We therefore conclude that the employer did not discharge claimant for misconduct, and claimant is not disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-32891 is set aside, as outlined above.

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

**DATE of Service:** April 7, 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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