

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0195**

*Affirmed*  
*Disqualification*  
*(Descalificación)*

**PROCEDURAL HISTORY:** On December 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 72615). Claimant filed a timely request for hearing. On February 5, 2015, ALJ Seideman conducted an interpreted hearing, and on February 9, 2015, issued Hearing Decision 15-UI-33170, affirming the administrative decision. On February 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Iwasaki Bros., Inc. employed claimant from March 26 through November 12, 2014. Claimant worked in the employer's wreath department.

(2) Claimant's first language was Spanish, and she had six years of education in Mexico. She speaks little English.

(3) The employer provides applicants with a Spanish and English version of its job application. When claimant applied to work for the employer, she filled out the Spanish version of the application. Claimant answered "no" to the following question: "Ha sido usted declarado culpable por alguna ofensa criminal? (aparte de las infracciones de tráfico)" (Exhibit 1 at p. 2.)<sup>1</sup> Claimant signed her agreement to a declaration on the application that stated, in relevant part: "Declaro que toda la información

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<sup>1</sup> The English version of the application translates this question as follows: "Have you ever been convicted from [sic] any criminal offense (except minor traffic violations)? (Exhibit 1 at p. 5).

manifestada en esta solicitud es verdadera y completa. Si Iwasaki Bros. Inc.[sic] contrata estoy de acuerdo en que me pueda despedir en el momento en que se den cuenta de alguna falsificación u omisión material en la información que he manifestado.” (Exhibit 1 at p. 5).<sup>2</sup>

(4) On November 9, 2014, claimant called her supervisor and left a message that she needed to take a day off from work on November 10 because she had lost her wallet and purse, and needed to attend to some other personal matters. On November 10, she called her supervisor to confirm that he had received her message, and the supervisor gave claimant permission to take the day off. Claimant told the supervisor she would bring him proof of the reason for her absence, but the supervisor told her it was unnecessary.

(5) On November 11, 2014, claimant handed her supervisor a sealed envelope, which the supervisor gave to the employer’s human resources manager. The manager opened the envelope and read the letter inside, which was dated November 10, 2014, signed by a Washington County parole and probation Officer, and stated the following: “This letter serves to verify that Ms. Karla Estrada-Juarez was at this office this morning at 8:30 a.m. and she returned again at 3:00 p.m. Ms. Estrada-Juarez is required to report for supervision.” (Exhibit 1 at p. 12).

(6) Also on November 11, the human resources manager met with claimant. The human resources assistant, who spoke Spanish, served as interpreter during this meeting. The manager asked claimant if the November 10 letter from the parole and probation officer was related to a conviction. Claimant explained that in 2011, she was convicted of drug possession and drug trafficking. The manager asked claimant why she had stated on her job application that she had never been convicted of a crime. Claimant responded that she was appealing the conviction. The human resources manager then asked claimant to leave her office so that she could make a decision regarding claimant’s continued employment. After talking with the employer’s general manager, the human resources manager called claimant back to her office and, through an interpreter, told claimant that the employer was discharging her for providing false information on her employment application.

**CONCLUSION AND REASONS:** We agree with the ALJ that 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. 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).

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<sup>2</sup> The English version of the application translates these sentences as follows: “I certify that all information that [sic] given on this application is true and complete. I agree that if hired, I may be discharged if Iwasaki Bros. At [sic] any time learns of any falsification or material omission in the information I have provided.” (Exhibit 1 at p. 6).

The employer expected that claimant would truthfully answer questions on the employer's job application. Claimant signed a declaration in which she agreed that her answers to the employer's questions were true and complete, and that she understood that any falsification of information provided in the application was grounds for discharge. Claimant understood the employer's expectations.

The employer's job application asked applicants if they have ever been convicted of a criminal offense. Claimant answered no to this question, even though she was convicted in 2011 of drug possession and drug trafficking. Claimant asserted, however, that this answer resulted from a good faith error and must therefore be excused under the exculpatory provisions of OAR 471-030-0038(3)(b). Claimant noted that in the Spanish version of the application, the question regarding convictions asks if the applicant has ever been convicted of an "ofensa<sup>3</sup> criminal." Claimant testified that in Mexican Spanish, "ofensa" refers to rude or aggressive behavior, and that "ofensa for me is to fight or to assault another person." Transcript at 18 and 21. Claimant asserted that she answered "no" to the question regarding convictions because she misunderstood the question, mistakenly concluding it did not refer to the type of crimes of which she had been convicted. Transcript at 20. According to claimant, she would have answered "yes," that she was convicted of a crime, had she understood the question, Transcript at 18.

At the hearing, however, claimant was asked what the Spanish word "criminal" meant. Claimant responded that it meant "[t]o have committed a crime within the United States, such as the one I had committed." Transcript at 21. Based on her understanding of this word, we find it more likely than not that claimant knew or should have known that the phrase "ofensa criminal" referred to the type of criminal behavior that resulted in her convictions. We therefore conclude that she intentionally provided false information on her job application when she responded that she had never been convicted of an "ofensa criminal." Claimant willfully violated the employer's expectations in doing so.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. Under OAR 471-030-0038(1)(d)(D), an act of dishonesty creates an irreparable breach of trust in the employment relationship that makes a continued employment relationship impossible and exceeds poor judgment. As a result, such conduct does not fall within the exculpatory provisions of OAR 471-030-0038(3).

The employer discharged claimant for misconduct, and claimant is disqualified from the receipt of benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-33170 is affirmed. *Decisión de la Audiencia 15-UI-33170 queda confirmada.*

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

**DATE of Service:** April 10, 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

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<sup>3</sup> "Ofensa" is translated as "1. offense 2. slight; insult." [www.spanishdict.com](http://www.spanishdict.com)

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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.