

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0200**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 115909). Claimant filed a timely request for hearing. On February 18, 2015, ALJ Clink conducted a hearing, and on February 19, 2015 issued Hearing Decision 15-UI-33751, concluding that claimant quit work with good cause. On February 23, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) McFarland Cascade employed claimant as a lead framer from November 18, 2013 to December 15, 2014.

(2) On November 18, 2014, the employer granted claimant an indefinite personal leave of absence. On December 10, 2014, claimant's supervisor informed him that the employer expected him to return to work on December 15, 2014. Claimant told his supervisor that he could not return to work on December 15. The supervisor told claimant to call him on December 12, 2014 to discuss the matter further.

(3) On December 12, 2014, claimant called his supervisor and told him he was willing to return to work on December 22, 2014. The supervisor reported to the employer that claimant stated he would not return to work until some time after January 1, 2015.

(4) On December 15, 2014, the employer mailed claimant a letter terminating his employment for allegedly failing to specify a date on which he would return to work.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude the employer discharged claimant. However, we conclude the employer discharged claimant, not for misconduct, and therefore agree with the ALJ that claimant is not disqualified from receiving benefits based on his work separation from the employer.

The first issue in this case is the nature of the work separation. 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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

In Hearing Decision 15-UI-33751, the ALJ concluded that claimant quit work.<sup>1</sup> However, the record shows that as of December 15, 2015, claimant was willing to continue the employment relationship and return from his leave of absence on December 22. The employer did not allow claimant to do so. The work separation therefore 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) 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.

The employer discharged claimant on December 15, 2014 because he allegedly failed to specify a date on which he would return to work from his leave of absence. However, claimant told his supervisor on December 12, 2014 that he would return to work on December 22, 2014. The employer discharged claimant because his supervisor did not forward that information to the employer. The employer therefore discharged claimant, not for misconduct. Claimant is not disqualified from the receipt of benefits based on his work separation from the employer.

**DECISION:** Hearing Decision 15-UI-33751 is affirmed.

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

**DATE of Service:** April 9, 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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<sup>1</sup> Hearing Decision 15-UI-33751 at 2.