

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0422**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 141311). Claimant filed a timely request for hearing. On April 2, 2015, ALJ Wipperman conducted a hearing, and on April 3, 2015 issued Hearing Decision 15-UI-36284, affirming the Department's decision. On April 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Ranstad US LLP employed claimant from November 4, 2013 until January 13, 2015. The employer was a staffing agency, and claimant was assigned to work as a phone representative in a call center operated by its client, Quintree.

(2) Quintree attempted to sell its clients' products and services to individuals referred to the call center through internet websites. Quintree's procedures required phone representatives to enter a "disposition" for each call that he or she made. Transcript at 7, 11. Typical dispositions included "answering machine" (when the call did not reach a live person); "call back" (when the person called was interested, but not prepared to commit to a purchase during the call), and "unserviceable" (when the person called was not interested in the product or service, or for other reasons declined to purchase it). Transcript at 11. Quintree removed potential customers designated as "unserviceable" from its future call lists for the product or service.

(3) The employer expected claimant to follow Quintree's instructions and requirements. Quintree expected claimant to enter correct and accurate dispositions for each call he made. Claimant understood the employer's and Quintree's expectations.

(4) On January 12 or 13, 2015, Quintree representatives reviewed summaries of recent call dispositions entered by claimant and other members of his team. Based on these summaries, the employer concluded

that claimant had entered a disproportionate number of “unserviceable” dispositions for his calls. Quintree representatives reviewed tapes of ten calls claimant had with potential customers. Of those ten calls, claimant entered a disposition of “unserviceable” for one of them when the duration of the call was only ten seconds. For a second call, claimant entered a disposition of “unserviceable” when the Quintree representative thought the person called had said that he or she wanted a later call. Based on these two calls, Quintree representatives became concerned about the accuracy of the call dispositions that claimant was entering. On a usual day, claimant entered dispositions for approximately 150 to 200 calls. Transcript at 33.

(5) On January 12 or 13, 2015, claimant’s team leader at Quintree met with him to discuss the manner in which he assigned dispositions to his calls. The team leader asked claimant why he had entered the incorrect disposition of “unserviceable” for a “chunk” of his calls. Transcript at 31. Believing that he team leader’s statement was accurate, claimant responded that he did not know the reason and further commented, “I guess it’s a habit.” Transcript at 32. Based claimant’s comment, Quintree representatives concluded that claimant was entering call dispositions without regard to the substance of the conversations he had with the potential customers.

(6) On January 13, 2015, Quintree discharged claimant from his work assignment for deliberately entering the incorrect disposition of “unserviceable” for calls made to avoid additional work.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but 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. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. The employer carries the burden to demonstrate claimant’s misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

In Hearing Decision 15-UI-36284, the ALJ concluded that claimant’s incorrect disposition of certain calls as unserviceable was a wantonly negligent violation of the employer’s expectations. The ALJ based his reasoning on claimant’s alleged admission to the team leader that he had “developed a habit of marking calls as ‘unserviceable,’” and that claimant “should have known that marking calls as ‘unserviceable’ would probably violate the employer’s expectation that he accurately disposition calls.” Hearing Decision 15-UI-32684 at 3.

At hearing, however, claimant explained his alleged admission to his team leader as being a response to a question in which it was assumed that he had entered the incorrect disposition of “unserviceable” for many calls and he was asked to provide a reason for his errors. Transcript at 31, 32. By responding that he “guessed” he must have developed a habit of designating calls as “unserviceable,” claimant was speculating about a potential cause to explain what he had been told was true, and his statement, in

context, does not show that he, in fact, had adopted such an habitual practice, or that he did not customarily try to enter call dispositions that were accurate. *Id.* We therefore disagree with the ALJ's determination that claimant's statement was such an admission, and giving it the decisive weight that he did.

Absent claimant's alleged admission, the evidence that the employer presented about claimant's alleged misconduct was only that claimant incorrectly entered dispositions for two calls out of the ten that Quintree sampled. This result, alone, is not sufficient to establish that claimant's errors were the result of the willful or wantonly negligent mental state required to establish disqualifying misconduct. It is reasonably possible that claimant's errors were not in the disposition he decided to assign to the calls, but due to mistakes he made when inputting that disposition into the employer's records, which caused the disposition he entered to be other than what he had intended. The employer did not present evidence about claimant's mental state when he entered the two incorrect call dispositions, or rule out that they were caused by simple mistakes in data entry. Absent evidence showing that claimant's errors were the result of factors of which he was consciously aware when he inputted the wrong dispositions into the employer's records, the employer did not meet its burden to show that claimant's behavior was willful or wantonly negligent within the meaning of OAR 471-030-0038(1)(c) and OAR 471-030-0038(3)(a). On this record, the employer did not show that it discharged claimant for misconduct.

The employer discharged claimant but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-36284 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle, *pro tempore*;  
Susan Rossiter, not participating.

**DATE of Service: June 4, 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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