

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0501**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 103917). The employer filed a timely request for hearing. On April 15, 2015, ALJ Seideman conducted a hearing, and issued Hearing Decision 15-UI-36917, affirming the administrative decision. On April 29, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Hey Joe Coffee Bar employed claimant as a barista from July 31, 2014 until February 16, 2015.

(2) At the end of September 2014, a customer told the employer's owner that he should not leave claimant alone in the coffee shop because she gave away food, beer and wine, and was unable to work by herself. The owner said nothing to claimant about the customer's remarks.

(3) In October 2014, a woman returned a sandwich claimant had prepared because the woman believed that claimant had given her the wrong sandwich, one that she had not ordered. The owner was present when the woman returned the sandwich, and he told claimant that she had given the customer the sandwich she ordered. The owner was not upset with claimant about this incident.

(4) On or about February 15, 2015, the owner received an email from a customer, complaining about claimant's behavior. The customer asserted that when she asked claimant about the availability of a breakfast sandwich, claimant "didn't say what I expected," looked at the customer blankly, and treated the customer "like an idiot." The customer also stated that claimant served her a poorly prepared breakfast sandwich, and attached pictures of the breakfast sandwich to her email. The customer concluded her email by stating that she used to enjoy going to the employer's coffee house, but no longer wanted to do so because she could not "imagine spending my money to keep someone like her [claimant] in a job." Audio 9:23 to 10: 34.

(5) On February 16, 2015, the owner discharged claimant for rude and inappropriate behavior with its customers.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that 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. In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

At the hearing, the employer's owner asserted that he discharged claimant because he had received many credible complaints about claimant's rude behavior with customers. The incident that triggered claimant's discharge, however, was an interaction with a customer that occurred in February 2015. Consequently, this incident must be the proper focus of our analysis.

The employer expected that claimant would serve customers courteously, and carefully prepare food and beverages for customers. Claimant knew and understood these employer expectations as a matter of common sense. The owner concluded that claimant violated these expectations in a February 2015 interaction with a customer that the owner learned about in an email from the customer. In that email, the customer complained that claimant looked at the customer "blankly" and treated the customer "like an idiot" when the customer asked claimant about a breakfast sandwich. The customer also asserted that the breakfast sandwich that claimant eventually prepared was poorly assembled. Claimant, however, denied that she behaved rudely or inappropriately with the customer, and also denied that she improperly prepared the customer's breakfast sandwich. Absent any reason to doubt claimant's credibility (and we find none), we give greater weight to claimant's firsthand testimony about the customer interaction than to the hearsay evidence presented by the employer. We therefore find that the employer failed to meet its burden to demonstrate that claimant willfully or with wanton negligence violated its standards of behavior in a February 2015 interaction with a customer.

We conclude that the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-36917 is affirmed.

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

**DATE of Service:** June 18, 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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