

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0696**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #100929). Claimant filed a timely request for hearing. On May 28, 2015, ALJ Seideman conducted a hearing, and on May 29, 2015, issued Hearing Decision 15-UI-39207, affirming the administrative decision. On June 5, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) QK Holdings employed claimant as an assistant manager at a Denny's Restaurant from May 1, 2014 to March 19, 2015.

(2) On October 17, 2014, the employer's general manager reprimanded claimant in writing for having shortages in the cash register on six of his shifts. In the reprimand, the general manager gave claimant instructions for handling cash. These instructions included the requirement that claimant count the money in the register at the beginning and end of and frequently during his shift, and that he assign one employee sole responsibility for operating the register.

(3) Claimant was often unable to count the money in the cash register before, during and after his shift because he was busy with other duties. Claimant often did not assign one employee sole responsibility for operating the cash register when the restaurant was full. Claimant believed that if only one employee operated the register, customers would have an unacceptably long wait to pay for their food.

(3) Several weeks after the October 17 reprimand, the employer's managers discovered that claimant had falsified a customer ticket so the amount of money in the register would match the amount of food sold during his shift. Claimant admitted that he falsified the ticket.

(4) On March 13, 2015, the employer reprimanded claimant in writing for having shortages in the cash register in the following amounts on the following dates: \$74 on January 9, 2015; \$114 on February 13, 2015; and \$107 on March 9, 2015.

(5) The employer's managers watched a video recording of activity at the cash register during claimant's shifts on March 14 and 15, 2015. They observed that several employees and claimant operated the cash register during these shifts.

(6) On March 15, 2015, the employer discharged claimant for failing to follow its guidelines for handling cash.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude 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. 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 had a right to expect that claimant would follow certain procedures in handling cash, such as counting cash in the register before, during and after his shifts, and assigning responsibility for operating the register to only one employee. Claimant knew and understood these expectations as a result of the written reprimands he received on October 17, 2014 and March 13, 2015 for cash shortages discovered in the register at the end of his shifts. The employer discharged claimant for failing to comply with its cash handling guidelines by allowing more than one employee to operate the cash register on March 15, 2015. Given that claimant knew his employer expected him to comply with its cash handling guidelines, his conduct in failing to do so two days after his employer reprimanded him for mishandling cash was, at best, a wantonly negligent violation of the employer's expectations.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under the exculpatory provisions of OAR 471-030-0038(3)(b). An act is isolated if it is a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d)(A). In addition to failing to comply with the employer's cash handling guidelines on March 14 and 15, 2015, claimant engaged in behavior that was, at best, wantonly negligent by falsifying a customer ticket in 2014. Claimant's exercise of poor judgment on March 15 was therefore a repeated act and not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). There is no evidence in the record to show that claimant sincerely believed that the employer would approve of his conduct on March 15.

The employer discharged claimant for misconduct. He is disqualified from receiving unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-39207 is affirmed.

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

**DATE of Service: July 27, 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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