

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0699

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 73445). The employer filed a timely request for hearing. On May 20, 2015, ALJ Clink conducted a hearing, and on May 29, 2015 issued Hearing Decision 15-UI-39222, affirming the Department's decision. On June 10, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Consumer Cellular employed claimant as a customer service representative from June 9, 2014 to March 11, 2015.

(2) Claimant's job was to handle customer calls. He was typically assigned 60 or more calls each day. The employer expected claimant to interact with customers on the phone in a respectful manner, document the calls, and to follow the employer's scripts. The employer issued warnings to claimant for failing to document calls, failing to cancel service when asked, and, in February 2015, suspended claimant after concluding that he had antagonized a customer and allowed a negative situation to escalate.

(3) The employer audited one of claimant's calls from March 6, 2015. The employer concluded claimant had not followed the employer's script, sounded frustrated, and continued to try to assist the customer after she had asked him to transfer her to a supervisor while he found a supervisor to help her. Claimant did not yell, was not hostile, and did not use foul language with the customer during the call.

(4) On March 11, 2015, the employer discharged claimant for his conduct during the March 6, 2015 call.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's discharge was 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 discharged claimant because of his conduct during the March 6, 2015 interaction with the customer. Claimant's tone with the customer showed some frustration, but, objectively considered, he was not rude, angry, threatening or hostile, and he did not use foul language during the call. The record fails to show that claimant was conscious of his tone with the customer or that his manner, tone of voice or behavior would probably violate the employer's standards. Claimant also continued to try to help the customer while getting a supervisor to assist her. The record fails to show that claimant knew he was expected to place the customer on hold or otherwise cease communicating with or attempting to help the customer while doing so. In the absence of evidence that claimant was conscious his behavior would probably violate a known standard of behavior held by the employer, the record does not show that claimant's discharge was based on his willful or wantonly negligent conduct.

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 15-UI-39222 is affirmed.

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

DATE of Service: July 31, 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. 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.