

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0784**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 94104). Claimant filed a timely request for hearing. On June 18, 2015, ALJ Seideman conducted a hearing, and on June 23, 2015 issued Hearing Decision 15-UI-40503, affirming the Department's decision. On June 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sheltercare employed claimant as an employment specialist for mentally ill clients from December 9, 2013 to April 14, 2015.

(2) The employer expected claimant to keep accurate business records and be honest with his supervisor about work-related matters. Claimant knew or should have known the employer's expectations as a matter of common sense.

(3) The employer's computer system allowed employees to input scheduled appointments with clients. The system provided employees with the means to designate when those appointments were "kept," by clicking a "kept" tab on the computer screen. Transcript at 23, 25. If an appointment was designated as "kept," no other employee could input an appointment or bill for services for the same time period as the "kept" appointment. The employer used its computer system and the "kept" designation, in part, to bill for employees' time.

(4) On April 9, 2015, claimant had a scheduled appointment with a client at 11:00 a.m. Claimant marked the appointment as "kept." Claimant did not actually meet with the client.

(5) Later on April 9, 2015, a therapist attempted to document an appointment she had attended with claimant's client that day at 11:00 a.m., the same time period as claimant's "kept" appointment. The employer's computer system would not allow her to enter the appointment because claimant had already documented an appointment for the same time on the same date as "kept." The therapist reported the problem to the program administrator, who was also claimant's supervisor.

(6) On April 10, 2015, the program administrator asked claimant about the specific client he purported to have met on April 9th at 11:00 a.m. Claimant confirmed that he had met with the client and said the client was doing "great." Transcript at 44.

(7) The program administrator had his supervisor review claimant's "kept" appointment entry, then confirmed with the client that he had not met with claimant on April 9th. The client told the program administrator that he had met with the therapist that day, and had not met with claimant. The employer suspended claimant.

(8) On April 14, 2015, the employer discharged claimant for falsification of records and being dishonest with the program administrator.

**CONCLUSIONS AND REASONS:** We agree with the ALJ 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 the right to expect claimant to refrain from falsifying records and dishonesty. Claimant knew or should have known those expectations as a matter of common sense. On April 9, 2015, claimant knowingly violated the employer's expectation when he falsified records by clicking a "kept" tab to indicate that he met with a client and the employer should bill for his time, and on April 10, 2015, claimant intentionally violated the employer's expectation when he was dishonest with the program administrator about having kept that appointment and about the client's progress.

Claimant argued that he did not violate the employer's expectations. Claimant argued, in essence, that he was unaware that clicking on the "kept" tab after missing an appointment would be considered a falsification of records, and thought billings were tracked through a "note" that has to be signed and submitted. Transcript at 33-34. However, it is implausible that claimant was unaware of the "kept" appointment process given the duration of his employment and the fact that no previous incidents of this

type had ever occurred.<sup>1</sup> Claimant also argued that he was not dishonest with the program administrator on April 10th because the program administrator never asked claimant about his appointment with the client on April 9th. Transcript at 28. However, claimant admitted that he met with the program administrator on April 10th. Transcript at 41. He testified regarding that meeting,

And Mr. Hukari walked up to me and said hey, how's it going? Oh, good. Good. I remember everything. And Mr. Hukari said, hey, I want to meet with you. I'm like okay. Sounds good. Yeah. Meet me in my office. I remember this all well. And then we - I went into the office with Mr. - his office with Mr. Hukari. We sat down.

We started looking at our cases and he asked me how is things going? I said I'm doing great. I said I'm doing really good. And he's going okay. Good. So what do you got going on today? Well, I got this. I got that. I got this. Oh, great. He - and I remember everything. And he said, wow, you're really - you're - you're doing great, John. You're doing great. I remember everything. He said you're doing - he said you are doing a great job, John. Keep it up. And that was it. And that's the god honest truth.

Transcript at 41. Although claimant stated four times how well he remembered his April 10th conversation with the program administrator, his testimony about the content was vague and did not include a detailed description of anything they discussed. In comparison, the program administrator testified about the same April 10th meeting,

The next morning I talked to Mr. Mendez. I asked him about the appointment. He said he kept the appointment.

I indicated to him that I was happy that this particular individual, the consumer, was re-engaging with the program. Because up until - there had been a period of time when he was not engaged. So I asked him about how that engagement looked. Juan reported that it was good. That he was enthusiastic, etc., etc. I said thank you.

Transcript at 23-24. The program administrator's detailed and specific recollection of the April 10th conversation has more probative value than claimant's non-specific recollection of the same conversation. We therefore find facts in accordance with the program administrator's version of events, and conclude that claimant told the program administrator that he had met with the client on April 9th and that the client was doing "great," even though neither of those things were true. We therefore conclude that claimant knowingly falsified records and was willfully dishonest with the program manager.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). He did not assert or show that he sincerely believed or had any factual basis for believing the employer would condone his falsification of records or dishonesty.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). An isolated instance of poor judgment is defined, in pertinent part, as a single or infrequent

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<sup>1</sup> One prior incident involving a "kept" appointment had occurred on April 4, 2015. However, in that instance, claimant also entered a note in the affected case indicating that he had not met with the client on that date, making that incident markedly different than claimant's conduct on April 9th since claimant accurately documented that no activity had occurred. Transcript at 9.

exercise of poor judgment rather than a repeated act or pattern of other willful or wantonly negligent conduct that does not exceed mere poor judgment by, among other reasons, causing a breach of trust in the employment relationship. OAR 471-030-0038(1)(d). Claimant's conduct was not isolated because he engaged in two instances of poor judgment separated by time and circumstance when he initially "kept" an appointment that he had not actually attended, and, the next day, when asked about the appointment, told the program administrator that he met with the client and that the client was doing "great." Claimant's conduct also exceeded mere poor judgment by causing a breach of trust because, after his intentional dishonesty with the program administrator about the welfare of a vulnerable client, stating the client was doing "great" even though claimant had not met with the client and did not know his mental health status, no reasonable employer could trust claimant to be honest about matters affecting clients' mental health.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 15-UI-40503 is affirmed.

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

**DATE of Service:** August 11, 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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