

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0847**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #151850). Claimant filed a timely request for hearing. On June 15, 2015, ALJ Shoemake conducted a hearing, and on June 22, 2015, issued Hearing Decision 15-UI-40399, concluding that the employer discharged claimant, but not for misconduct. On July 13, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument to the extent it was relevant and based on the hearing record.

**FINDINGS OF FACT:** (1) Spirit Mountain Gaming employed claimant as a valet attendant from July 22, 2014 until April 24, 2015.

(2) Claimant's job as a valet attendant required that he maintain a valid driver's license and remain insurable under the terms of the employer's policy. Claimant knew and understood these requirements. The employer's policy required that an employee report any arrest or citation to the employee's supervisor, and also specified that any citation an employee received for driving more than 26 miles over the speed limit would make the employee uninsurable. Claimant received a copy of the employer's handbook which included this policy when he was hired.

(3) On April 20, 2015, claimant was cited by a law enforcement officer for careless driving and for driving 92 miles per hour in a 55 mile per hour zone. Claimant contacted his supervisor, told his supervisor about the citation, and asked if he would lose his job. The supervisor responded that he needed to check with the employer's risk management division.

(4) Claimant's supervisor checked with the risk management division, and learned that the citation claimant had received made him uninsurable. The employer discharged claimant on April 24, 2015.

**CONCLUSION AND REASONS:** We disagree 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.

In Hearing Decision 15-UI-40399, the ALJ found that claimant "did not know that the insurance company limited the miles an hour over the speed limit on a speeding ticket that could make him uninsurable." Based on this finding, the ALJ concluded that "claimant's receiving the ticket that caused him to become uninsurable has not been shown to be a willful or wantonly negligent disregard of the employer's interest." Hearing Decision 15-UI-40399 at 4 and 5. We disagree.

Claimant knew that a requirement of his job was to remain insurable, and knew that a speeding citation could affect his insurability; he admitted he was aware there would be "some consequences" if he was cited for speeding in his personal vehicle during non-work hours. Audio at 18:38. Claimant thought he would get a warning or a "write up" for his speeding citation, and did not believe the citation made him uninsurable. Audio at 16:45. We note, however, that claimant should have known about the 26 mile per hour limitation on a speeding citation; he testified that he read the employer's handbook but must have "overlooked" that section. Audio at 15:39. The record thus shows that claimant knew or should have known that a citation for driving more than 26 miles over the speed limit would make him uninsurable and unemployable as a valet attendant. His conduct in driving more than 26 miles over the speed limit was, at best, a wantonly negligent violation of the employer's policies.

Claimant's actions cannot be excused as an isolated instance of poor judgment. An isolated instance of poor judgment is "a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior," which does not exceed mere poor judgment by being unlawful or tantamount to an unlawful act. OAR 471-030-0038(1)(d)(A). Claimant violated the law by driving more than 92 miles per hour in a 55 mile per hour zone, a violation which he never denied committing. Claimant's conduct was not an isolated instance of poor judgment.

Claimant's actions also cannot be excused as a good faith error. As discussed above, claimant understood that a speeding citation would have negative consequences for him and could affect his insurability and employability. Claimant could not therefore have sincerely believed that the employer would excuse his speeding citation.

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

**DECISION:** Hearing Decision 15-UI-40399 is set aside, as outlined above.

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

**DATE of Service: August 20, 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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