

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0848

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #114731). Claimant filed a timely request for hearing. On June 30, 2015, ALJ Wyatt conducted a hearing, and on July 8, 2015, issued Hearing Decision 15-UI-41204, affirming decision #114731. On July 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In her written argument, claimant presented new information that was not part of the hearing record. Claimant asserted that prior to her discharge, the customers whose information the employer concluded she had improperly accessed “had been making me uncomfortable” for a number of months, by behaving rudely and attempting to discuss non-work related topics when conducting transactions with claimant, a bank teller. According to claimant, she complained to her manager about this situation, but the manager told her that nothing could be done. Written Argument at 3. Claimant argued that the employer should not have discharged her because of complaints made by these customers, contending that “[f]or one person to make a complaint and I be fired over it” was unfair. Written Argument at 4.

Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the information is material and relevant to EAB’s determination, and the party offering the information shows that circumstances beyond the party’s control prevented the party from offering the information at hearing. In support of her request to have EAB consider new information, claimant asserted that she was unable to provide this information at the hearing because “at the time of the hearing I was 8 months pregnant and was very emotional.” *Id.* We do not determine whether claimant has demonstrated that circumstances beyond her reasonable control prevented her from presenting evidence about customer harassment at the hearing because we find that this evidence is neither relevant nor material to our determination. Claimant misconstrued the reason for her discharge. As discussed below, the record demonstrates that the employer discharged claimant because she violated its information security policy by looking up customers’ information that claimant did not need to perform her job. Contrary to claimant’s assertion, the employer did not discharge her because these customers complained about

claimant's conduct. Evidence regarding problems complainant may have had with these customers is therefore not relevant or material to our decision as to whether claimant engaged in the conduct for which the employer discharged her. For this reason, we deny claimant's request to have EAB consider new evidence. We have considered the remainder of claimant's written argument to the extent it is material and based on evidence in the hearing record.

FINDINGS OF FACT: (1) U.S. Bank employed claimant as a teller from July 19, 2013 to May 14, 2015.

(2) The employer's policies included an information security policy that specified that an employee could only look up customer information that was needed to perform the employee's job, or information the customer gave permission for the employee to access. The policy prohibited an employee from accessing customer information if the employee had no business need to do so, and specified that any violation of this prohibition would be grounds for immediate discharge. Claimant knew about and understood these policies. Transcript at 8.

(3) Sometime prior to May 8, 2015, claimant processed a change of address for two customers, a husband and wife. Claimant also processed transactions for these customers at the drive up teller window and a teller window inside the bank. These customers were neighbors of claimant and her partner, who lived together. Claimant's partner was involved in a dispute with these customers.

(4) On May 8, 2015, the customers who were claimant's neighbors talked to the manager of the branch where claimant worked about their concern that claimant had access to information in their accounts. The branch manager assured the customers that a teller would only access their information if it was necessary for the teller to perform the teller's job, and that they need not conduct any transactions with claimant if they did not wish to do so. After speaking with the customers, the branch manager entered a note in the customers' accounts about their conversation. When she did so, the manager noticed that claimant had accessed the customers' accounts a few days earlier. Transcript at 7. The branch manager spoke with claimant about this matter. Claimant admitted that she accessed the customers' accounts and said that she did so to see who lived in the customers' rental unit.

(5) On May 14, 2015, the branch manager discharged claimant for violating its Code of Ethics by looking up information in customers' accounts that was not necessary for performance of her job.

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's information security policy required that an employee only look up customer information if it was necessary for performance of the employee's job, prohibited an employee from accessing customer information for reasons unrelated to the employee's job duties, and specified that an employee who violated this prohibition was subject to immediate discharge. Claimant knew about and understood this policy. Claimant knowingly violated this policy when she looked up information in customers' accounts for a personal reason – she wanted to find out who was living in the customers' rental unit. Claimant had no job-related reason to access this information.

At hearing, claimant asserted that she had legitimate reasons for her conduct. Her testimony about her actions was inconsistent and contradictory in many respects, however. She initially testified that she looked up information in the customers' accounts because she wanted to check on a change of address she had made for these customers. Transcript at 15. She subsequently gave a different reason for accessing the customers' accounts. She testified that she looked up information in the customers' accounts because she was suspicious about some of the customers' recent transactions and needed information to determine if an investigative referral form (IRF) was appropriate.¹ Claimant provided differing justifications for her conclusion that an IRF might be appropriate, however. She initially asserted that she believed the customers' transactions were suspect because the customers visited both the drive up teller window and a teller window inside the bank on the same day. Transcript at 17. The employer's representative then asked her why she needed to look at the customers' accounts to prepare an IRF, noting that the report only required that she provide the customers' names, and the date and description of the suspicious activity. Claimant responded that she had suspicions about the customers' transactions because “[i]t was multiple deposits that were large dollar amounts. That just seemed out of place for that particular customer.” Transcript at 22-23. Claimant's account of her May 8 meeting with the branch manager was also inconsistent. Claimant initially asserted that she never told the branch manager about her IRF investigation when they met on May 8. Transcript at 24-25. When questioned about this statement on cross examination, however, claimant changed her account of the May 8 meeting and testified that she discussed the IRF with the branch manager on that date, and that the manager told her to take the matter up with another supervisor. Transcript at 26.

Finally, claimant's testimony about the lack of any connection between her investigation of the customers' supposedly suspicious activity and the complaint the customers made about her was not credible. Claimant contended that when she began her IRF investigation, she was completely unaware that the customers whom she was investigating were the same individuals who had complained to the branch manager about her on May 8. Claimant asserted that she only learned the identity of the customers she was investigating when she was discharged on May 14. The employer's representative, however, testified that the branch manager's notes of the May 8 meeting showed that when the manager met with claimant, the manager identified by name the customers who had complained about claimant. Although the ALJ gave claimant an opportunity to respond to or rebut this information, claimant did not do so. Transcript at 31-32. Claimant's testimony about her actions was therefore neither straightforward nor consistent. For this reason, we find facts in accordance with the employer's witness. We conclude that claimant knowingly violated the employer code of conduct policy when she looked up

¹ An IRF is a report about possible suspicious customer activity an employee may submit; an IRF is prepared without the knowledge of or approval by a customer. Submission of an IRF triggers a more detailed investigation by the employer.

information in customers' accounts because she wanted to determine who was living in the customers' rental, a reason that was unrelated to the performance of her job duties.

Claimant's conduct cannot be excused as an isolated instance of poor judgment conduct under OAR 471-030-0038(3)(b). An isolated instance of poor judgment is defined, in relevant part, as a single or infrequent exercise of poor judgment 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 caused a serious breach in the employment relationship. As a teller, claimant daily performed numerous transactions that allowed her access to a great deal of confidential customer information. As a result of claimant's actions – looking up customer information when she had no business need to do so – no reasonable employer would be able to trust that claimant would comply with its information security policy in performing her job duties.

Claimant's conduct also cannot be excused as a good faith error. The record is devoid of evidence that claimant sincerely believed that the employer would excuse her actions in accessing customers' records for a reason unrelated to performance of her job duties, *i.e.*, to determine who was living in the customers' rental unit.

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

DECISION: Hearing Decision 15-UI-41204 is affirmed.

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

DATE of Service: August 24, 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.

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