

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1078**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 110634). The employer filed a timely request for hearing. On September 2, 2015, ALJ Wyatt conducted a hearing, and on September 4, 2015 issued Hearing Decision 15-UI-43937, concluding that claimant's discharge was for misconduct. On September 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

**FINDINGS OF FACT:** (1) US Bank employed claimant as a telephone customer care specialist from October 27, 2003 to June 26, 2015.

(2) The employer expected its telephone customer care specialists to refrain from disconnecting calls from customers or other employees before the calls were completed. Claimant understood that expectation.

(3) On June 19, 2015, claimant deliberately disconnected a call from an employee before the call was completed. Later that day, claimant deliberately disconnected a call from a customer before the call was completed. On June 20, 2015, claimant deliberately disconnected a call from an employee before the call was completed. On June 24, 2015, claimant deliberately disconnected a call from a customer before the call was completed. Later that day, claimant again deliberately disconnected a call from a customer before the call was completed. On June 25, 2015, claimant deliberately disconnected a call from a customer before the call was completed. Claimant knew disconnecting the calls before they were completed violated the employer's expectations.

(4) On June 25, 2015, the employer's operations manager became aware that claimant had deliberately disconnected the six calls from June 19 through 25, 2015 before the calls were completed. On June 26, 2015, the employer discharged claimant for doing so.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's discharge was 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 a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had a right to expect claimant to refrain from disconnecting calls from customers or other employees before the calls were completed. Claimant understood that expectation, and consciously engaged in conduct she knew violated the expectation, on six occasions from June 19 through 25, 2015. Claimant therefore willfully violated the employer's reasonable expectations on those occasions. Claimant's conduct cannot be excused as an isolated instance of poor judgment because it was a repeated act and pattern of willful behavior, and not a single or infrequent occurrence. *See* OAR 471-030-0038(1)(d)(A). Claimant's conduct cannot be excused as a good faith error because she did not sincerely believe, and have a rational basis for believing, her conduct complied with the employer's expectations.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of benefits.

**DECISION:** Hearing Decision 15-UI-43937 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** October 1, 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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