

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1087**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 141400). Claimant filed a timely request for hearing. On August 27, 2015, ALJ Frank conducted a hearing, and on August 28, 2015, issued Hearing Decision 15-UI-43668, concluding the employer discharged claimant, but not for misconduct. On September 14, 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 based on the record.

**FINDINGS OF FACT:** (1) Best Western Hood River Inn employed claimant as a front desk supervisor from April 30, 2013 to June 19, 2015.

(2) The employer expected its front desk supervisors to treat employees and guests with courtesy, limit their meal periods to 30 minutes, limit their rest breaks to 15 minutes twice a day, refrain from using their cell phone at the front desk, schedule other employees' breaks and do so fairly and in compliance with wage and hour laws, perform assigned job duties while on paid work time and render assistance at the front desk when needed. Claimant was aware of the employer's expectations.

(3) By early May 2015, based on complaints from guests and staff, the employer concluded claimant had violated most if not all of the employer's expectations. On or about May 18, 2015, a hotel guest complained that claimant appeared unkempt. The guest also complained that unlike other front desk staff, claimant failed to offer hotel stay information until the guest specifically asked, and responded rudely to the guest's questions. Based on all complaints, the hotel manager recommended to the front desk manager that claimant be discharged. The front desk manager essentially defended claimant and offered to assist her in correcting the offending behaviors. Accordingly, on May 28, 2015, the employer issued claimant a warning concerning the alleged violations and permitted her to continue to work.

(4) Claimant requested and received approval in writing to take a vacation from June 5 to June 8, 2015. After the request was approved, the front desk manager notified claimant that because another employee had requested that same time off, her vacation approval was being revoked. After claimant objected, the manager made arrangements, granting claimant all of the requested time off with the exception of June 7, 2015. However, claimant refused to work that day and the manager considered claimant's communications about this matter to be unnecessarily confrontational. Nonetheless, the manager refrained from discharging claimant for this behavior.

(5) On June 18, 2015, the hotel manager notified the front desk manager by email that a front desk employee had recently reported to human resources that claimant was not "respectful of [her] time, abuses [the employer's] meal policy, takes 20 minute smoke breaks, uses bad language . . . does not help out up front when help is needed, and continues to abuse the hotel cell phone policy." Transcript at 6-8. The hotel manager recommended that the front desk manager "replace her . . . sooner than later." *Id.* On June 19, 2015, the employer discharged claimant based on the complaint of the front desk employee.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. The employer discharged claimant, but not for misconduct under ORS 657.176(2)(a).

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. The employer has the burden to establish claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

As a preliminary matter, we agree with the ALJ that the employer chose not to discharge claimant until after the June 18 email, and to limit the inquiry to relevant matters, the discharge analysis initially is focused on the proximate cause of the discharge, or the incident without which a discharge would not have occurred when it did. Hearing Decision 15-UI-43668 at 5. *See e.g. Cicely J. Crapser* (Employment Appeals Board, 13-AB-0341, March 28, 2013) (discharge analysis focuses on the proximate cause of the discharge, which is the event that "triggered" the discharge); *Griselda Torres* (Employment Appeals Board, 13-AB-0029, February 14, 2013) (discharge analysis focuses on the proximate cause of the discharge, which is the "final straw" that precipitated the discharge); *Ryan D. Burt* (Employment Appeals Board, 12-AB-0434, March 16, 2012) (discharge analysis focuses on the proximate cause of the discharge, which is generally the last incident of alleged misconduct before the discharge occurred); *Jennifer L. Mieras* (Employment Appeals Board, 09-AB-1767, June 29, 2009) (discharge analysis focuses on the proximate cause of the discharge, which is the incident without which a discharge would not have occurred when it did). Here, the initial analysis of whether claimant's discharge disqualifies her from unemployment benefits is, therefore, properly limited to the complaints contained in the June 18 email which allegedly occurred after the May 28 warning and claimant's behavior regarding her June vacation, and proximately caused her discharge on June 19.

To substantiate the complaints referenced in the June 18 email, the employer presented testimony from the front desk employee that made the complaints to human resources. However, we agree with the ALJ that the witness only summarized his conclusions that claimant continued to violate many of the

employer's policies, without providing sufficient detail regarding dates and circumstances. Transcript at 30-35; Hearing Decision 15-UI-43668 at 4-5. In written argument, the employer acknowledged that the witness was unable to identify particular incidents or particular dates, but nonetheless asserted that its witnesses' testimony "was sufficient to sustain a finding of misconduct" because "poor conduct had continued", claimant had failed to "properly and fairly" issue breaks and had "continued flouting employer procedures" with "negativity...", "pretty much every day." Employer's Written Argument at 1. Claimant generally denied that she committed the alleged violations in question, and without additional detail regarding dates and circumstances, was left without the ability to fairly defend against the allegations. Transcript at 37-43. While the allegations in question were sufficient for the employer to make its discharge decision, without more, they were insufficient for it to meet its burden to establish that claimant violated the employer's expectations, much less that she did so willfully or with wanton negligence under ORS 657.176(2)(a).

Claimant was discharged, but not for misconduct under ORS 657.176(2)(a), and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 15-UI-43668 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** October 26, 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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