

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1214**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 134628). The employer filed a timely request for hearing. On September 18, 2015, ALJ Shoemake conducted a hearing, and on September 25, 2015 issued Hearing Decision 15-UI-44920, concluding that claimant's discharge was for misconduct. On October 8, 2015 claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) National Electronics Warranty employed claimant as a telephone agent from June 17, 2013 to July 7, 2015. Claimant worked in the employer's case management department assisting customers with technical issues.

(2) The employer expected employees to behave in a professional manner and refrain from using foul language at work. Claimant understood those expectations.

(3) On or about April 16, 2015, claimant used "abusive vulgar language" at work. Exhibit 1. Claimant knew her conduct violated the employer's expectations regarding workplace behavior, and a supervisor warned her that it did.

(4) On April 27, 2015, claimant yelled at, and was "fresh and rude," with one or more customers. Exhibit 1. Claimant knew her conduct violated the employer's expectations regarding workplace behavior, and a supervisor again warned her that it did.

(5) On July 1, 2015, claimant returned to work after her lunch break wearing a tank top, which violated the employer's dress code. A supervisor reprimanded claimant, who yelled at and used foul language toward the supervisor. Claimant knew yelling and using foul language violated the employer's expectations regarding workplace behavior.

(6) The employer discharged claimant, in part, for her behavior in July 1, 2015.

**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).

An employer has the right to expect an employee to behave in a professional manner and refrain from using foul language at work. The employer discharged claimant, in part, for violating those expectations on July 1, 2015 by yelling at and using foul language toward a supervisor. At hearing, claimant admitted knowing at the time that her behavior was "obviously out of line." Audio Record at 32:40-32:45. Claimant therefore willfully violated the employer's reasonable expectations regarding workplace behavior.

Claimant's conduct on July 1, 2015 cannot be excused as an isolated instance of poor judgment. To be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). On April 16, 2015, claimant used "abusive vulgar language" at work, and on April 27, 2015 yelled at, and was "fresh and rude" with one or more customers. At hearing, claimant again admitted knowing at the time that her conduct violated the employer's expectations regarding workplace behavior. Audio Record at 27:15-28:00. Claimant therefore willfully violated those expectations on April 16 and 27, 2015. Her exercise of poor judgment on July 1, 2015 therefore was a repeated act or pattern of willful behavior, and not a single or infrequent occurrence.

Claimant's conduct July 1, 2015 cannot be excused as a good faith error. Claimant understood yelling at and using foul language toward a supervisor violated the employer's expectations regarding workplace behavior. Her conduct therefore was not the result of an error in her understanding of the employer's expectations.

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

**DECISION:** Hearing Decision 15-UI-44920 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 29, 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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