

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1290**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 145201). Claimant filed a timely request for hearing. On October 20, 2015, ALJ Wyatt conducted a hearing, and on October 26, 2015 issued Hearing Decision 15-UI-46510, concluding the employer discharged claimant, not for misconduct. On October 30, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the parties' written arguments to the extent they were 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) Claimant last worked for Lane County School District during its 2014-2015 school year, which ended on June 12, 2015. Claimant lived and worked for the employer in the Eugene, Oregon area.

(2) As of June 12, 2015, the employer had no more work for claimant to perform, and had not offered her work for the 2015-2016 school year, which was to begin in September 2015. In July 2015, claimant moved to Joseph, Oregon, and was no longer willing to work for the employer for the 2015-2016 school year.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that the employer discharged claimant, not for misconduct.

The primary issue in this case is whether claimant was discharged when the employer's 2014-2015 school year ended on June 12, 2015, or quit work when she moved from Eugene to Joseph in July 2015. OAR 471-030-0038(2)(a) (August 3, 2011) states that if the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. If the employee is willing to continue to work for the same employer for an additional period of time but is not

allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.* No continuing relationship exists if the employee is not performing some sort of service and employer does not have an expectation that a service will be performed. *Kimberly K. Carr-Cecotti* (Employment Appeals Board, 02-AB-2040, October 15, 2002).

As of June 12, 2015, the employer had no more work for claimant to perform during its 2014-2015 school year, and had not offered her work for the 2015-2016 school year, which did not begin until September 2015. Claimant therefore was not performing a service for the employer, and the employer did not have an expectation that a service would be performed. The employment relationship therefore was severed on June 12, 2015, before claimant moved from Eugene to Joseph in July 2015. As of June 12, 2015, claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer. The work separation therefore is a discharge, and not a quit.

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).

In the present case, the employer discharged claimant due to a lack of work, and not because she violated the standards of behavior which an employer has the right to expect of an employee, or disregarded the employer's interest. The employer therefore discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-46510 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** November 23, 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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