EO: 700
BYE: 201622

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

173
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1319

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 6, 2015 the Oregon Employment Department (the Department) served two notices of administrative decision, the first concluding the employer discharged claimant Randall Avery for misconduct (decision # 132744) and the second concluding the employer discharged claimant Ronda Avery for misconduct (decision # 130455). Both claimants filed timely requests for hearing. On October 7, 2015, ALJ M. Davis conducted a consolidated hearing, and on October 29, 2015 issued two hearing decisions. Hearing Decision 15-UI-46733 reversed decision #132744 and concluded that the employer discharged claimant Randall Avery but not for misconduct. Hearing Decision 15-UI-46735) reversed decision # 130455 and concluded the employer discharged claimant Ronda Avery but not for misconduct. On November 6, 2015, the employer filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 46733 and 46735. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-1319 and 2105-EAB-1320).

Both parties submitted lengthy written arguments which included information not presented at hearing. Neither party explained why it did not present this information during the hearing and neither showed as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond its reasonable control prevented it from doing so. For this reason, EAB did not consider the new information offered by either party in its argument. EAB considered only information received into evidence during the hearing when reaching this decision.

In its written argument, the employer contended that the Department did not have the statutory authority to award unemployment insurance benefits to either claimant Randall Avery or claimant Ronda Avery. Employer's Written Argument at 2-4. This contention was not raised during the hearing and no evidence was presented by any of the parties to support or refute it. Although the employer sought to present new facts in its argument, not offered during the hearing, to support this contention, it did not, as discussed above, make the requisite showing under OAR 471-041-0090 that would allow EAB to consider them and to address the issue raised in the employer's argument. Under ORS 657.275(2), EAB's function is to perform a de novo review on the record developed by the ALJ and to address issues raised by the evidence in that record. Absent facts in the record or an adequate explanation of why the employer was prevented from presenting those facts, there is insufficient evidence for EAB to consider the employer's contention that the Department was not authorized to provide benefits to either claimant.

FINDINGS OF FACT: (1) Idaho Waste Systems (IWS) hired claimant Ronda Avery (Ronda) as a bookkeeper sometime in approximately June 2000. Claimant Randall Avery (Randy) began helping out at IWS for no pay sometime in approximately July 2011, and IWS hired him as the general manager at a landfill it operated sometime in January 2012. IWS discharged both Ronda and Randy on June 8, 2015.

(2) Ronda and Randy were married. Sometime before 2008, they incorporated a business, RSA. RSA provided heavy equipment to contactors and other customers under lease and lease-to-own agreements. Typically, RSA leased equipment to customers under terms in which the agreed upon value of the equipment, along with 15 percent interest, was amortized and paid by the customer monthly or at some other agreed upon interval. Depending on the customer's circumstances, RSA might require a customer to make a lump sum or balloon payment during the lease term. At the end of the lease term, if all payments had been made, the customer would own the equipment.

(3) Sometime in approximately 2008, RSA leased some equipment to IWS. The lease term was approximately 12 months and the monthly payments were approximately $2,100. This lease was not approved by the board of directors before it was executed on behalf of IWS by Robert Riemenschneider (Robert). Transcript at 129. Robert was Ronda's father and, at this time, was also the president of IWS, a member of its board of directors and a 34 ½ percent shareholder. Ronda's brother, Ronald Riemenschneider (Ronnie), who was also Robert's son, was a minority shareholder of IWS.

(4) Sometime in 2008 or 2009, RSA took possession of two Caterpillar 621E scrapers that an RSA lessee was unable to continue making payments on. RSA had originally purchased each scraper for $125,000 or for a total price of $250,000. The lessee relinquished possession of the scrapers in California and they were taken to Ronnie's equipment yard in Sacramento. They remained in Ronnie's equipment yard.

(5) Sometime in approximately 2009 or 2010, RSA leased additional equipment to IWS. The lease term was approximately 24 months and the monthly payments were approximately $2,350 per month. Robert did not obtain the approval of the board of directors before executing this lease on behalf of IWS. Transcript at 129.

(6) Beginning sometime before 2010 and continuing thereafter, IWS experienced financial difficulties and had limited cash flow. In approximately April 2010, IWS executed a promissory note in favor of

Jack Yarbrough (Yarbrough) to repay a loan. Under the promissory note, IWS agreed to pay Yarbrough the principal amount of $4,200,000 that IWS had borrowed, along with 14 percent interest, payable in fixed monthly payments of $23,000 , with a balloon interest payment of $312,000 due annually. Exhibit 2 at 205. IWS also agreed to pay to Yarbrough an approximately $200,000 loan fee. Transcript at 129. IWS's payments under the note were to run from April 10, 2010 to May 15, 2014. *Id.* IWS gave Yarbrough a security interest in a landfill, its principal asset, to secure its payment obligations.

(7) In 2010, Robert visited Randy in RSA's offices in Redmond, Oregon. Robert wanted to purchase some scrapers for IWS that would enable it to build a new landfill in northern Idaho that it planned to operate. Robert wanted financing for any IWS purchase and had not been able to obtain it elsewhere. Transcript at 152. Randy told Robert that he had two scrapers available in Ronnie's equipment yard in California and showed Robert some pictures of the scrapers. Randy had not inspected the scrapers after they had been surrendered to RSA in California. Robert was experienced in deals involving heavy equipment. Transcript at 52. Randy, on behalf of RSA, and Robert, on behalf of IWS, negotiated the terms of a lease-to-own agreement for the scrapers. They agreed upon $75,000 as the value for each scraper, or $150,000 for both. In their negotiation, they extended the lease term beyond the 36 months that was typical for RSA leases. They extended the lease term to the extent necessary to reduce IWS's monthly payments to an amount it could afford given its cash flow difficulties. Transcript at 55. As drafted, the lease required IWS to pay $1,000 for the first four months, $3,500 for the next 36 months, and to make a final balloon payment of approximately $48,985.51, after which IWS would own the scrapers for a payment of $1.00. Exhibit 2 at 248. The interest rate that RSA charged IWS to finance the scrapers was eight percent, rather than the 15 percent it typically charged, and the loan agreement did not require the payment of any loan fees or charges. Transcript at 55, 130, 140. The lease term ran until May 10, 2014. Exhibit 2 at 250. The lease was signed on approximately December 1, 2010. Exhibit 2 at 248. Robert did not seek board of directors or shareholder approval before he executed the lease on behalf of IWS. Transcript at 129. Ronda typed up the lease for Randy and Robert, but did not participate in negotiating its terms. As IWS actually performed under the lease, it paid only $1,000 for the first eight months, which caused the final balloon payment due on May 10, 2014 to become $57,249.88. Exhibit 1 at 18.

(8) After the lease between IWS and RSA was executed, IWS decided not to proceed in building the landfill for which it had leased the scrapers. Robert told Randy he wanted to leave the scrapers in Ronnie's yard in California until IWS had a use for them or he made a decision on whether IWS should keep them. Transcript at 54. The scrapers remained in California.

(9) On March 5, 2011, Robert ceased acting as IWS's president and left its board of directors. On that day, Ronda became IWS's president and its chief executive officer. Later in 2011, Ronnie was elected to IWS's board of directors. By January 2012, Ronda had discharged IWS's general manager for unsatisfactory performance and, on behalf of IWS, had hired Randy as general manager. Although the scrapers leased to IWS were still in California in 2012, Randy determined that IWS would not sell them because IWS was planning a sales expansion and was going to need to move several hundreds of thousand cubic yards of materials, which would require the use of the scrapers. Transcript at 54-55. Sometime thereafter, Randy spoke with Ronnie about IWS retaining ownership of the scrapers but renting them out to third-parties until IWS commenced its expansion. Ronnie told Randy that the construction market was improving in California and he thought he could rent the scrapers to third-parties. Transcript at 72. Ronnie ultimately was able to rent the scrapers for IWS. Transcript at 72.

However, the scrapers had been idle for such a long time that they needed extensive repairs to keep them operable. The cost of the repairs was at least as great as the rental income collected and no net rental income was available to remit to IWS. Transcript at 72-73, 146, 147.

(10) As of approximately 2013, IWS's board consisted of Ronnie, Hayden Watson (Watson) and a third person.

(11) Sometime before April 2014, Ronda concluded that IWS would not have the available cash, approximately $57,149.88, to make the balloon payment due in May 2014 that would enable IWS to own outright the scrapers it had been leasing from RSA. Because IWS's final payments owed to Yarbrough under its promissory note to him were also due in May 2014, its cash position was seriously impaired. Transcript at 125. Although Ronda tried to negotiate with Yarbrough to forestall immediate payment, Yarbrough refused to extend the payments due under IWS's promissory note to him. Transcript at 125, 184. By April 2014, IWS had made total payments of $ 122,500 to RSA under the 2010 lease for the scrapers. Transcript at 55, 56, 68, 69. Ronda and Randy, on behalf of IWS, thought that it was in IWS's interest to extend the time under which IWS was obliged to pay the balloon due under the 2010 lease to RSA because IWS would not lose the equity that it had accrued in the scrapers, would own the scrapers at the end of an extended term of payments and IWS needed the scrapers for work it planned on the sales expansion. Transcript at 54-55, 60. Given IWS's financial constraints, Ronda had concluded that third-party lenders would not loan IWS the necessary funds to make the payoff or would not do so on affordable terms. Transcript at 125, 126.

(12) On April 10, 2014, Ronda executed a second agreement with RSA to extend the balloon payment due to RSA under the 2010 lease. This second agreement allowed IWS to pay the $57,149.88 that had originally been the balloon payment due as the final payment under the 2010 lease in 18 monthly payments of $3,500 beginning on April 10, 2014 and continuing until September 10, 2015. Exhibit 1 at 18, 20. At the end of the lease term, IWS would own the scrapers for an additional payment of $1.00. Exhibit 1 at 19. The lease stated that IWS was renting from RSA in addition to the two scrapers, two other pieces of equipment that IWS already owned. Exhibit 1 at 18. The intention of Randy, on behalf of RSA and Ronda, on behalf of IWS, was that the two additional pieces of equipment would act as collateral to secure IWS's payment obligations under the second, extended lease. Transcript at 8, 55, 56, 68, 69. Under the second, extended lease, the interest rate that RSA charged to IWS was the same, eight percent, as in the first lease. Transcript at 69, 70, 127. Usually, when a customer was not able to fully perform under an equipment lease, like IWS, RSA required the customer to add collateral to the agreement, and often required the customer to pay a higher interest rate and loan fees or charges. Transcript at 60. RSA did not add charge IWS a higher interest rate or additional fees or charges. Under the extended lease, if it fully performed, IWS would pay a total of $63,000 for the scrapers, which was $5,820.12 more than the balloon payment of $57,149.88 that had been extended.

(13) Before executing the April 10, 2014 lease extension, Randy contacted Ronnie, a member of IWS's three person board of directors, to obtain his advice on whether IWS should enter into the lease extension. Transcript at 70. Randy expressed approval of the lease extension. Transcript at 57, 70. Randy tried to reach the second board member, Hayden Watson (Watson), to obtain his approval of the extension agreement, but was unable to do so. Transcript at 57. Ronda did not seek the approval of IWS's board of directors before entering into the lease extension because it did not create a new obligation for IWS but only extended the obligation that Robert had initially undertaken on IWS's

behalf, the additional funds obligated by the extension were modest, and Robert had not sought board approval for the original obligation or for any other leases he entered into on IWS's behalf with RSA. Transcript at 125-127, 129. Ronda did not consider the additional collateral that RSA required to extend the lease to constitute the type of extraordinary transaction that required board approval. Transcript at 127. Sometime after Ronda executed the lease extension agreement, Watson, another board member in addition to Ronnie, was told about the lease extension, its terms and its requirement of additional collateral and he expressed his agreement with it. Transcript at 160-161.

(14) Sometime around May 2014, IWS stopped making payments on the promissory note to Yarbrough. On May 16, 2014, Yarbrough filed a lawsuit to foreclose on the property that IWS had pledged to secure its obligation under the note. Transcript at 131. IWS's board of directors authorized IWS to defend against Yarbrough's suit. Transcript at 172. Ronda, as IWS's president, wanted to stave off as long as possible Yarbrough's foreclosure on an important IWS asset and to try to negotiate a resolution with Yarbrough. Transcript at 172, 173.

(15) In December 2014, IWS had the two scrapers that were the subject of the original lease agreement and the lease extension brought up to Idaho to work on its sale expansion. Transcript at 58. IWS used the scrapers to work on a landfill. Transcript at 54.

(16) On June 8, 2014, IWS had a meeting of its shareholders followed by a meeting of its board of directors. At the shareholder meeting, Ronnie and Watson were removed as board members. At the board of directors' meeting, Yarbrough was appointed president of IWS. Randy and Ronnie were discharged for alleged untrustworthiness and breaching their fiduciary duties to IWS principally for their involvement in the 2010 equipment lease and the April 10, 2014 extension of that lease. Transcript at 7, 117.

CONCLUSIONS AND REASONS: The employer discharged claimant Randall Avery and claimant Ronda Avery but not 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 carries the burden to prove claimants' misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

While the employer's president, Yarbrough, raised several complaints that IWS allegedly had with both claimants, the gist of his testimony addressed claimant's alleged misconduct in connection with the 2010 lease and the April 2014 extension of it. Transcript at 8-19, 21-24, 30, 117-120, 185. It was Yarbrough's contention that because of their interest in RSA, both claimants either should not have approved of both leases on behalf of IWS or should have brought both leases to the attention of the

board of directors for corporate approval. Transcript at 119, 120. Although the attorney for the employer purported to read from the IWS's corporate bylaws establishing an alleged duty on the part of a corporate director or a shareholder not to approve transactions in which he or she had a financial interest, the employer did not submit any *evidence* about the content of its bylaws or how they might have obligated Randy, an employee, or Ronda, an officer, to recuse themselves from any transactions between IWS and RSA, the corporation in which they had an interest. Transcript at 161-163. Consequently, the nature and extent of their duties to IWS when they participated on behalf of RSA in the two lease agreements with IWS can only be determined as a matter of common sense.

With respect to the 2010 lease agreement, the employer's witnesses did not dispute that the financial terms that RSA imposed on IWS for leasing the equipment were far more favorable than those RSA required for other lessees. At hearing, the employer emphasized certain deposition testimony given by Ronnie, presumably in 2014, that in his opinion the value of the two scrapers Robert agreed that IWS would rent from RSA was only $25,000 or $30,000 each when they were brought to Ronnie's yard in California in 2007 or 2008, rather than the $75,000 value agreed upon in the 2010 lease. Transcript at 10, 74, 87, 88, 109, 120, 148-149, 152-154. The employer's apparent intention was to suggest that both claimants grossly overvalued the scrapers to IWS's detriment in the 2010 lease. However, both claimants disputed this purported hearsay valuation of the scrapers at the time they were rented to IWS in *2010*. Transcript at 74, 148. Since the employer did not admit Ronnie's deposition transcript into evidence, it is difficult to reliably determine what he actually said about the 2007 or 2008 value of the scrapers, and if he had any opinion was about their value in 2010 and what that was. Assuming that Ronnie's 2007 or 2008 valuation of the equipment was approximately accurate, which is problematic, the employer did not present any evidence that Ronnie told ether claimant of his opinion of the equipment's value, or that either claimant was aware or should reasonably have been aware that the value of the equipment was substantially less in 2010 than the $75,000 valuation placed on it in the lease. Transcript at 180. In addition, at the time of the 2010 lease, Randy was not associated in any capacity with IWS and there is no ground on which to impute to him any obligation to protect IWS's interests in that lease. At the time the 2010 lease was executed, Ronda was IWS's bookkeeper and it also was not disputed that she did not take part in negotiating the terms of the lease, presumably deferring to Robert, her father and IWS's president, to safeguard IWS's interests during the negotiation. Furthermore, it was not disputed that Robert was experienced in buying and leasing heavy equipment like the scrapers and presumably was capable of properly valuing that equipment and did so when he negotiated the terms of the 2010 lease on behalf of IWS. Although the employer's witness appeared to dispute Robert's participation in negotiating and agreeing to the terms of the 2010 lease when the witness contended that Robert had said that he did not sign the 2010 lease, both claimants testified that Robert did in fact sign it. Transcript at 14, 35, 54, 128. The copy of the 2010 lease submitted as an exhibit during the hearing shows a signature on it purporting to be Robert's, in his capacity as president to IWS. Exhibit 2 at 257. Claimants' first-hand testimony about Robert signing the 2010 lease is entitled to greater evidentiary weight than the employer's unsupported hearsay evidence denying that fact. The employer did not demonstrate that Robert did not negotiate, did not agree to the terms of and did not sign the 2010 lease.

Considering the 2010 lease, the employer did not demonstrate that Randy had any obligation to IWS when it was negotiated, or that Randy and Ronda knew or should have known that RSA had overvalued the leased scrapers. The employer did not demonstrate that Robert was not IWS's negotiator of that lease, was not knowledgeable about the values of scrapers and did not have the authority to enter into

that obligation on IWS's behalf. On these facts, it is cannot be concluded that Ronda, IWS's bookkeeper, should have overridden Robert's decision since he was her superior as both the president and a board member of IWS. While the employer contended that both claimants should have acted, on IWS's behalf to repudiate the 2010 lease agreement after it had been entered into since the scrapers remained in California until 2014, the employer did not dispute that it was Robert's initial decision to leave the scrapers in California when IWS's plans to build the landfill on which he intended to use them fell through. Nor did the employer show that, after Robert left IWS in 2011, Ronda's or Randy's decision to keep the scrapers for use on a planned sales expansion was contrary to IWS's interest or other than a defensible exercise of business judgment. To the extent that the scrapers would otherwise have been idle, it was not disputed that Randy arranged for Ronnie to rent the scrapers for IWS until IWS had a need for them, for which it can be inferred that Randy was acting to protect IWS's finances when it was not able to use the scrapers. Although IWS did not receive any profit on the rentals because the expenses of repairs to the scrapers exceeded the rental income, the employer did not show that this was attributable to the actions of either claimant or any circumstance they reasonably should have foreseen. On this record, the employer did not show that Ronda or Randy violated any reasonable duty to the employer by their involvement in the 2010 lease or retaining the scrapers after Robert left IWS.

In connection with the 2014 extension of the 2010 lease, the employer's principal contentions were that IWS should have found some way to pay outright the $57,000 balloon due under the 2010 lease rather than agreeing to pay the balloon off in payments under the 2014 lease extension. Transcript at 118, 120. The employer also contended that Ronda, on IWS's behalf, should not have agreed to add two pieces of IWS's equipment as collateral to secure IWS's payment obligation under the 2014 lease extension. Transcript at 120. With respect to paying off the balloon outright, Ronda persuasively testified that IWS's cash flow was insufficient to allow it to make such a payment while meeting IWS's other cash obligations, including its obligations to Yarbrough under IWS's promissory note to him. In addition, given its financial situation, IWS would be unable to borrow the funds to pay off the balloon on more favorable terms than RSA offered in the 2014 lease extension. Transcript at 125. The employer contended, however, that given the money IWS later spent to defend against his foreclosure lawsuit, IWS could somehow have found the money to pay off the balloon in 2014 or could have arranged to borrow the money from its former president, Robert. Transcript at 118, 120. However, the issue is not what IWS was able to do when faced with extraordinary circumstances, like this lawsuit, that threatened an apparently integral IWS asset, or whether it conceivably could have taken the unusual step of soliciting those funds from Robert. The issue, for purposes of this analysis, is whether Ronda acted with wanton negligence when she agreed with RSA to extend the payment of the balloon (and incur an additional financing cost of $5,820.12), or acted with wanton negligence in concluding that extending the lease on the terms she did was an acceptable compromise with RSA when IWS was unable to pay the balloon payment that was due. Transcript at 125, 126. The employer's witness did not contend that in the ordinary course of business Ronda likely would have been able to arrange for IWS to secure the funds necessary to pay off the balloon, and the employer did not demonstrate, more likely than not, that she would have been able to obtain those funds on more favorable terms that those offered by RSA under the 2014 lease extension. On the facts as they exist in this record, the employer did not show that extending IWS's payment obligation under the 2014 lease extension was wantonly negligent on Ronda's or Randy's part, or that it was anything other than a legitimate exercise of business judgment.

With respect to pledging the additional collateral, the employer did not refute the testimony of Ronda and Randy that RSA customarily required additional collateral when a customer, like IWS, was unable

to make scheduled lease payments and a lease term needed to be extended or that RSA usually required a higher interest rate than in the initial lease and imposed certain additional charges. Transcript at 60, 80, 130. The employer did not contend that the value of the collateral for the 2014 lease extension was grossly disproportionate the value of the obligation it secured. The employer did not contend that it was unusual in the heavy equipment leasing business to require collateral, as RSA did from IWS, when a lease extension was needed because of a customer's financial inability to perform under an initial lease. Indeed, aside from the pledging of collateral, the employer did not contend that any of the terms of the 2014 extension were atypical, or that IWS did not receive from RSA very favorable terms, including a continuation of the same eight percent interest for financing the scrapers and no loan fees or charges. While the employer appeared at certain points to contend that Randy and Ronda, through RSA, were somehow attempting to fraudulently gain ownership of the pledged collateral, because it was described in the 2014 lease extension agreement as being rented to IWS and, by inference owned by RSA, all parties referred to the pledged equipment as "collateral" and none suggested that it did not remain in IWS's ownership at all times. Transcript at 8, 14, 55, 56, 68, 69, 120, 126, 127. At best, the description of the collateral appears only to have been a scrivener's error or a result of careless drafting. On this record, the employer did not show that pledging IWS's equipment to secure its performance under the 2014 lease extension was a wantonly negligent act on Ronda's or Randy's part or that it was not a good faith exercise of business judgment.

Aside from the terms of the 2014 lease extension, the employer contended that Randy and Ronda should have taken the agreement to the board of directors for its approval because a conflict of interest arose since they were the owners of RSA, the lessor, and an officer and employee of IWS, the lessee. Transcript at 119, 120. The employer did not present any evidence from which it could be inferred that Ronda or Randy had an obligation to refer all transactions in which they had any personal financial interest to the board of directors for approval. From Ronda's testimony, it appeared that she thought she needed to seek director approval only if the terms of a transaction were problematic from IWS's perspective and might not be reasonably viewed as in IWS's interest. Transcript at 126, 127. It cannot be concluded that Ronda's belief was contrary to all common sense. The basis for Ronda's belief was strengthened in light of Robert's entering into prior agreements with RSA on IWS's behalf without board of director approval when, if a strict definition of conflict of interest was employed, he had such a conflict since Ronda, his daughter, had a financial interest in RSA at the time those prior agreements were entered into. Transcript at 129. Since Ronda thought the 2014 lease extension, and its terms, were in IWS's business interests and an acceptable compromise for its inability to pay the balloon payment under the 2010 lease, neither she nor Randy violated the common sense understanding she had of an unacceptable conflict of interest.

Nor were there other grounds on which Ronda reasonably should have sought board of director approval of the 2014 lease extension. The employer did not refute Ronda's testimony that, since the 2014 lease extension merely restructured IWS's obligations under the 2010 lease, and did not create any new obligations for IWS other than a relatively modest sum of $5,820.12 attributable to additional interest, she did not think she needed to seek board of approval. Transcript at 127. As well, since the value of IWS's total obligations under the 2014 lease extension were not large when viewed in the context of IWS's usual transactions and were not of an amount for which she generally sought approval from the board of directors, she thought that she was authorized to agree to the 2014 lease extension, without board approval, since it was not an extraordinary transaction. Transcript at 127. The employer did not dispute that Ronda did not typically seek board approval for transactions like the 2014 lease extension.

Similarly, Ronda testified that she did not consider the pledging of additional collateral to secure IWS's obligations under the 2014 lease extension to be an extraordinary commitment of its assets that would require approval from the board of directors and the employer's witness did not refute that testimony. Transcript at 126, 127. Furthermore, before the execution of the 2014 lease extension, one of the three board members, Ronnie, was asked about the lease extension and he expressed agreement that it was in IWS's interest, including the pledging of additional collateral. Transcript at 57, 60, 70. After the lease extension was executed, another of the three board members expressed that he agreed with the extension. Transcript at 159-161. The employer did not dispute that two of the three board members agreed to the execution of the 2014 lease extension, or suggest that the outcome would have been any different if Ronda had formally presented the 2014 to the board for its approval at convened meeting of the board of directors. Nor did the employer dispute that Robert had not presented three prior agreements with RSA to the board of directors for approval before entering into them in 2008, 2009 or 2010 and the original lease for the scrapers in 2010. In sum, it does not appear that the IWS consistently required approval from its board of directors for agreements similar to the 2014 lease extension, or for agreements in which an officer had a personal financial interest. On this record, the employer did not demonstrate that Ronda or Randy willfully or with wanton negligent violated the employer's standards when it did not seek formal approval from the board of directors for the 2014 lease extension.

The employer discharged claimants, Randall Avery and Ronda Avery, but not for misconduct. Claimants are not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 15-UI-46733 is affirmed.
Hearing Decision 15-UI-46735 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: <u>January 7, 2016</u>

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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