

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1524**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 82842). Claimant filed a timely request for hearing. On December 18, 2015, ALJ Hoppe conducted a hearing, and issued Hearing Decision 15-UI-49733, affirming the administrative decision. On December 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Busy Bee Cleaning employed claimant as a cleaner and laundry worker from June 9, 2011 until September 21, 2015.

(2) The employer's policy required that employees treat coworkers with respect and courtesy, and to be aware that customers might occasionally be present in areas where they might be working. Claimant knew and understood this policy as a matter of common sense, and because she received one copy of the policy when she was hired and another copy on June 2, 2015.

(3) On February 14, 2014, claimant's supervisor reprimanded claimant in writing for engaging in a dispute with her coworkers in which claimant and her coworkers screamed at one another.

(4) On October 13, 2015, claimant's supervisor reprimanded claimant for speaking rudely to a guest in a hotel in which claimant was cleaning.

(5) On June 1, 2015, claimant was assigned to pick up laundry from a facility. When claimant arrived at the facility, claimant became angry because the laundry was not ready for pick up. When claimant's coworkers tried to assist her with the laundry, claimant told them that she did not need help because she could do her job. Claimant began arguing with a coworker; the coworker called claimant a "fucking

bitch” and claimant said “you’re a fucking bitch too.” Audio Recording at 37:23. Claimant’s supervisor reprimanded claimant in writing for this incident.

(6) On September 10, 2015, claimant complained about her supervisor to a customer whose home claimant was cleaning. Claimant told the customer that the supervisor did not pay her enough for her work, did not give her enough time to do her laundry, and that the supervisor’s personal problems interfered with the supervisor’s job.

(7) Also on September 10, 2015, claimant arrived at a hotel to pick up laundry she was assigned to process. Claimant became angry because she believed her coworkers, who were working in the hotel, had not properly prepared the laundry for pickup. Claimant walked down the hallway of the hotel, loudly telling her coworkers that it was not her (claimant’s) “fucking job” to ready the laundry for pick up, asking if anyone knew how to use a zipper, and instructing her coworkers to learn how to zip the “fucking bag.” Audio Recording at 17:42.

(8) On September 21, 2015, the employer discharged claimant for disrespectful and rude behavior with coworkers and a customer on September 10.

**CONCLUSION AND REASONS:** We agree with the ALJ, and conclude that the employer discharged claimant 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 discharged claimant for engaging in rude and disrespectful behavior with coworkers and a customer on September 10, 2015. Claimant knew that the employer expected her to treat her coworkers with respect and courtesy as a matter of common sense and because the employer had disciplined her three times -- on February 14 and October 13, 2014, and on June 2, 2015 – for failing to comply with these expectations. Claimant consciously violated the employer’s expectations regarding treatment of coworkers and customers when, on September 10, she made critical and negative remarks about her supervisor to a customer and engaged in an angry confrontation with her coworkers in which she used foul language. Claimant’s behavior was, at the very least, wantonly negligent.

In regard to her conduct on September 10, claimant never directly denied that she made inappropriate remarks to the customer, asserting only that the customer wanted claimant to clean her house. Audio Recording at 29:10. In regard to the dispute over the laundry, claimant also did not directly deny that she engaged in an argument with her coworkers, but insisted that she had not used foul language and did not yell at her coworkers. Audio Recording at 34:58. Two of the employees who witnessed claimant’s behavior on September 10, however, complained to the supervisor about claimant’s behavior on that

date and the supervisor obtained statements from the employer's about claimant's conduct. The supervisor also talked to the customer who confirmed the comments claimant made to her on September 10. In addition, claimant admitted that she had a "temper" and that she talked loudly. Audio Recording at 28:50. Based on these circumstances, we conclude that the preponderance of evidence demonstrates that claimant made inappropriate remarks to a customer and treated her coworkers disrespectfully and rudely on September 10.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). For conduct to be considered isolated, it must be a single or infrequent exercise of poor judgment rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d). Claimant's conduct was not isolated. On September 10, she twice engaged in conduct that constituted wantonly negligent violations of the employer's expectations regarding appropriate treatment of coworkers and customers. She engaged in similarly wantonly negligent conduct on June 1, 2015, when she became involved in an angry altercation with a coworker and called the coworker a "fucking bitch." Claimant asserted, however, that she made the comment only after the coworker had called *her* a "fucking bitch." Although the coworker's behavior may have been provoking, the coworker's refusal to comply with the employer's expectations regarding respectful treatment of coworkers does not justify or excuse claimant's refusal to comply these same expectations. Based on warnings she had received from her supervisor, claimant knew or should have known that she should not have responded to the coworker's provocations and disengaged herself from the situation. Given claimant's conduct in June 2015, we conclude that her rude and disrespectful behavior on September 10 was not a single or infrequent occurrence.

Claimant's conduct cannot be excused as a good faith error under OAR 471-030-0038(3)(b). Claimant did not allege or show that she sincerely believed or had any basis for believing the employer would excuse or condone her conduct toward her coworkers and a customer, given that she had been disciplined three times for similar behavior in February and October 2014, and in June 2015.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 15-UI-49733 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** January 14, 2016

**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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