

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1538**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73034). Claimant filed a timely request for hearing. On December 3, 2015, ALJ Upite conducted a hearing, and on December 11, 2015 issued Hearing Decision 15-UI-49216, concluding the employer discharged claimant, but not for misconduct. On December 29, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. The employer submitted written argument with its application for review. However, the employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB therefore considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Archdiocese of Portland St. Therese Church & School employed claimant as a music teacher from August 25, 2003 to June 17, 2015.

(2) The employer normally required its teachers to obtain and maintain a state teaching license. Exhibit 1. However, claimant's license expired before she started working for the employer, and the employer repeatedly waived the requirement that she renew her license.

(3) On December 1, 2014, the employer required claimant to renew her license by June 30, 2015. Claimant registered to take the required courses in early 2015, but was unable to do so because of an

illness that required her to be hospitalized for approximately two weeks. The courses were not offered again until after June 30, 2015. Claimant therefore was unable to renew her license by June 30.

(4) The employer discharged claimant for failing to renew her state teaching license by June 30, 2015.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's discharge was 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 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 willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(3)(c). 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).

The employer discharged claimant for failing to renew her state teaching license by June 30, 2015. However, claimant did not know, and had no reason to know, until December 1, 2014 that she was expected to renew her license. She was too ill to take the required classes in early 2015, and the classes were not offered again until after June 30. Claimant therefore did not deliberately fail to renew her license by June 30, and she did not consciously engage in conduct she knew or should have known would probably result in her failure to do so. Her failure to renew her license by June 30 therefore was not willful or wantonly negligent, or reasonably attributable to her. Claimant's discharge was not for misconduct. She is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 15-UI-49216 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** January 19, 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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