

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0074**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 135757). Claimant filed a timely request for hearing. On December 28, 2015 and January 6, 2016, ALJ Murdock conducted a hearing, and on January 12, 2016, issued Hearing Decision 16-UI-50883, affirming the administrative decision. On January 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Qwest employed claimant as a network technician from October 1, 1997 to September 24, 2015. Claimant's job duties included installing, repairing, and maintaining the lines necessary to supply customers with internet, telephone and television service in their homes and businesses.

(2) Claimant's normal work hours were 7:30 a.m. to 4 p.m. Each day he reported for work at the employer's garage, the employer provided him with a list of jobs which he was expected to complete during that the day. The employer expected that claimant would perform work on these assignments efficiently, and not misuse company resources by making non-work related trips in his company vehicle. After claimant completed each job and before he began work on another job, claimant was expected to enter the time spent on the job into the DOTLOG system on a computer provided by the employer. The employer also expected that claimant would contact customers to keep them informed of installation and repair work he was performing for them. As an experienced technician, claimant knew and understood these employer expectations.

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<sup>1</sup> Hearing Decision 16-UI-50883 incorrectly named the employer as "Quest." Department records, however, correctly name the employer as "Qwest" and we take official notice of this fact. Any party that objects to our doing so must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. OAR 471-041-0090(3) (October 29, 2006). Unless an objection is received and sustained, the noticed fact will remain in the record

(3) In January 2015, a customer complained to the employer about claimant's failure to contact her about service she had been expecting. As a result of this complaint, claimant's supervisor investigated claimant's phone records and work activity. Based on this investigation, the employer determined that claimant had violated its policies and failed to meet its expectations on several occasions. On February 23, 2015, the employer reprimanded claimant in writing for failing to contact customers, failing to stay current with his work load, and failing to accurately document time spent on his jobs. In the written reprimand, the employer placed claimant "on discipline" for a period of 24 months, and stated that any future failure to meet the employer's performance expectations could result in disciplinary action, up to and including discharge. Exhibit 2. Also in the written reprimand, the employer placed claimant on an "Action/Developmental Plan" which, among other things, required that he be subjected to random audits and also required that he write a "Letter of Commitment" to state how he planned to meet the employer's performance expectations in the future. *Id.* As instructed, claimant wrote a "Letter of Commitment" in which he stated he would "call my customers and make them aware of my arrival" and "stay current on my dot log." *Id.*

(4) On September 10, 2015, claimant left the employer's garage at approximately 8 a.m. with a list of 8 jobs he was assigned to perform on that day. Claimant indicated in the employer's DOTLOG system that he worked on the second job to which he was assigned from 9:38 am to 10:33 a.m., and also noted that he called the customer, and tested the customer's service at the network interface unit located at the customer's home. These records were not accurate, however. Claimant actually arrived at the second job at 10 a.m., waited in his vehicle until 10:19 a.m., then left the job and parked in another location from 10:24 to 10:47 a.m. Claimant never performed any work at the customer's home. Exhibit 1, Investigatory Interview at 10.

(5) Also on September 10, claimant failed to work consistently or efficiently on jobs he was assigned to perform. For example, from 10:49 a.m. until 11:03 a.m., he worked at one location; he then left and returned to this location to work from 1:35 p.m. to 1:42 p.m. From 12:11 p.m. to 12:45 p.m., he worked at another location; he then left and returned to this location to work from 2:29 p.m. until 2:51 p.m. Exhibit 1, Investigatory Interview at 10.

(6) On September 12, 2015, claimant left the employer's garage at approximately 8 a.m. with a list of 7 jobs he was assigned to perform that day. After leaving his first job at 9:49 a.m., he attempted to complete a repair for another customer but was unable to do so. Claimant did not contact this customer to explain his inability to finish the repair. Exhibit 1, Investigatory Interview at 5.

(7) Also on September 12, claimant did not accurately record work he performed. He indicated in the DOTLOG system that he worked on an assigned job from 11:02 a.m. until 1:11 p.m. During that time, however, claimant left this job and drove to a number of different locations. Exhibit 1, Investigatory Interview at 6. Claimant also indicated in the DOTLOG system that he worked on an assigned job from 1:13 p.m. until 1:50 p.m. During that time, however, he drove to another job, where he parked his vehicle for approximately 26 minutes. Exhibit 1, Investigatory Interview at 7. Finally, claimant indicated on in the DOTLOG system that he worked on an assigned job from 1:51 p.m. until 3:11 p.m. During that time, however, he left this job and drove to three different locations. *Id.*

(8) On September 14, 2015, a customer complained to the employer about work he believed claimant had not performed on September 12. The employer reviewed claimant's DOTLOG entries and the GPS records for claimant's vehicle for September 10 and 12, and interviewed claimant.

(9) On September 24, 2015, the employer discharged claimant for conduct on September 10 and 12, 2015 that violated the employer's expectations and policies.

**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 expected that claimant would perform his assigned work efficiently; contact customers to keep them informed about service he was performing or going perform for them; make appropriate use of company equipment, including his company vehicle; and accurately record time worked on particular jobs in the employer's DOTLOG system. Claimant knew and understood these expectations, partly as a matter of common sense and also because he had been reprimanded in writing for failing to meet many of these expectations on February 23, 2015. In that written reprimand, the employer particularly warned claimant about the need to contact his customers and accurately record time spent on his assignments.

Claimant's conduct on September 10 and 12, 2015, violated the employer's expectations. On both these days, he failed to accurately record time worked on particular assignments, claiming that he spent time working on particular jobs when he had not been doing so. He failed to contact a customer on September 12 to tell her he was unable complete work for her. He used his company vehicle to make numerous trips for no apparent work-related reason. He displayed a pattern of inefficient work performance by working on several jobs for a while, leaving these jobs, and returning later to continue his work. The record shows that claimant consciously engaged in behavior on September 10 and 12 that he knew or should have known violated the employer's expectations. Claimant's conduct was, at the very least, wantonly negligent.

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 infrequent. On September 10 and 12, he engaged in many violations of the employer's expectations: he made several inaccurate entries in the employer's DOTLOG system, he left and returned to job sites at least six times, and he made numerous trips in his company vehicle that had no discernible work-related purpose. Based on this record, we conclude that claimant's behavior on September 10 and 12, 2015, 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 he sincerely believed or had any basis for believing the employer would excuse or condone his conduct on September 10 and 12, given that he had been disciplined for similar behavior on February 23, 2015, and warned that any further violations of the employer's expectations could result in disciplinary action, up to and including discharge.

We conclude that the employer discharged claimant for misconduct. He is disqualified from the receipt of unemployment benefits on the basis of this work separation.

**DECISION:** Hearing Decision 16-UI-50883 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** February 5, 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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