

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0838**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 10, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 85301). The employer filed a timely request for hearing. On June 17, 2016, ALJ Triana conducted a hearing, and on June 22, 2016, issued Hearing Decision 16-UI-62280, concluding that the employer discharged claimant for misconduct. On July 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on information received into evidence at the hearing.

**FINDINGS OF FACT:** (1) Asurion Services, a company that provides technology protection services, employed claimant from October 13, 2014 until April 8, 2016 as a case management representative. Claimant's job duties included contacting customers to resolve problems and issues customers had with the services offered by the employer.

(2) The employer expected that when claimant called customers, she would respond if and when the customer answered. The employer also expected that claimant would not engage in call avoidance, which was defined as making calls with no legitimate business purpose in an effort to look busy. Claimant knew about and understood the employer's expectation that she respond to customers and avoid engaging in call avoidance.

(3) On April 7, 2016, a representative from the employer's quality department discovered that claimant may have been prematurely ending some customer calls. The representative reviewed records of outbound calls claimant made from March 23 through April 6, 2016, and listened to 9 customer calls. During each of these calls, claimant failed to respond after the customer answered; as a result, the customer ended the call after several seconds had elapsed. The quality department review also showed

that during the period scrutinized, claimant called one number 33 times and another number 29 times; claimant had no business-related reason for calling these two numbers.<sup>1</sup> Exhibit 1.

(4) On April 8, 2016, claimant's supervisor and another supervisor met with claimant to discuss the results of the quality department's review of her calls. During this meeting, claimant did not deny that during the period reviewed, she made 62 non-business related calls, and failed to respond to customers 9 times. Also on April 8, 2016, the employer discharged claimant for engaging in call avoidance by making calls that had no legitimate business purpose, and for failing to respond to customers when they answered her calls.

**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. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for engaging in call avoidance by making 62 calls that had no legitimate, business related purpose and for failing to respond to customers during 9 calls. Claimant knew about and understood the employer's expectations that she respond to customers when they answered her calls and that she not engage in call avoidance by making non-business related calls in an effort to appear busy. Claimant denied, however, that she ever failed to respond to customers when they answered her calls, or engaged in call avoidance. At the hearing, she explained that her headset may have malfunctioned during the 9 calls in which she did not respond after the customer answered. Transcript at 22. We note that claimant failed to offer this explanation at the April 8 meeting with her supervisors, however. In addition, it seems unlikely that claimant's headset malfunctioned during the period reviewed by the quality department. If claimant's headset had not been working, it is probable that problems with more than 9 calls would have occurred and that claimant would have brought the faulty equipment to the attention of her supervisor or other manager. In regard to the 62 calls claimant made that the employer asserted were made for no business-related reason, claimant argued that she called these numbers because they appeared in the database that contained customer account information, and that she made the calls in an attempt to reach customers. Transcript at 9-10. The employer's records show, however, that even though one of the two numbers claimant repeatedly called belonged to case that closed on March 23, 2016, claimant continued to call this number after March 23. Exhibit 1 at 1. Based on the totality of these circumstances, we conclude that the explanations claimant provided for the 9 calls during to which she failed to respond to a customer, and the 62 calls made for no

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<sup>1</sup> Claimant's supervisor testified that when claimant called these numbers, she was either placed in a "voice mail loop" or received a busy signal. Transcript at 9.

legitimate business purpose were not credible. Where claimant's testimony contradicted the employer's evidence, we therefore found facts in accordance with the employer's version of events.

We conclude that claimant knew or should have known that her failure to respond to customers during 9 calls and her engagement in call avoidance from March 23 through April 6, 2016 violated the standards of behavior the employer rightfully expected of her. Her actions therefore demonstrated a conscious disregard of the employer's interests and constituted misconduct.

Claimant's conduct cannot be excused as an isolated instance of poor judgment under the exculpatory provisions of OAR 471-030-0038(3)(b). For an instance of poor judgment to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. From March 23 through April 6, claimant engaged in repeated acts that demonstrated a willful disregard of the employer's expectations regarding call avoidance and responses to customers. Claimant's behavior therefore demonstrated a pattern of willful and wantonly negligent behavior, and was not an isolated instance of poor judgment.

Nor can claimant's action be excused as the result of a good faith error. Based on the evidence in the record, we find no reason to conclude that claimant sincerely but mistakenly believed the employer would excuse her failure to respond to customers during 9 calls, or her engagement in call avoidance by making 62 calls for no business-related reason.

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

**DECISION:** Hearing Decision 16-UI-62280 is affirmed.

Susan Rossiter and D. P. Hettle;  
J. S. Cromwell, not participating.

**DATE of Service:** August 10, 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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