

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0887**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132511). Claimant filed a timely request for hearing. On July 5, 2016, ALJ S. Lee conducted a hearing, and on July 12, 2016 issued Hearing Decision 16-UI-63616, reversing the Department's decision and concluding the employer discharged claimant but not for misconduct. On July 28, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Beginning in approximately 2002, claimant was employed as a property manager by Westridge Properties. Due to the death Westridge's owner, Summit Real Estate Management, LLC assumed management of the properties previously managed by Westridge and hired many of its employees in the same positions they held with Westridge. Summit Real Estate Management, LLC employed claimant as a property manager from April 1, 2016 until April 22, 2016.

(2) After the employer took over managing Westridge's properties, it implemented many new procedures. It also used different computer software programs to keep records on the managed properties. Claimant received training in the new programs, but had difficulty using them and struggled. Claimant attributed her delay in learning to many interruptions in her training resulting from phone calls, people moving in, people shopping for apartments, and other requests of assistance.

(3) The employer's management was dissatisfied with the time it was taking claimant to learn to use the software. The employer's corporate office regularly contacted claimant to inquire why she had not properly entered information into the employer's electronic systems. Once, claimant mentioned to a member of the employer's management that she might need to quit work if she was unable to learn how to use the computer software programs.

(4) On April 22, 2016, in the morning, one of the employer's senior managers was training claimant on how to use the software programs. The manager became irritated when claimant incorrectly completed a lease agreement and he needed to do it over for her. Claimant was frustrated and told the senior

manager she could not absorb what he was teaching her because, due to interruptions, the training was broken up into random increments. Claimant then commented, "If I don't get consistent training, I might have to turn in my notice to leave." Transcript at 27. By this comment, claimant did not intend to leave work. Since it was then around noon, claimant went to her nearby home for lunch.

(5) On April 22, 2016, after claimant left for lunch, the senior manager called the employer's vice-president and told the vice-president that claimant had resigned. Shortly after, the district manager called the senior manager and they agreed that, in light of claimant's resignation, the senior manager would need to go to claimant's home where she was eating lunch and pick up claimant's set of work keys. At approximately 12:20 p.m., the senior manager arrived at claimant's home. He told claimant he had spoken with the employer's vice-president and the employer's district area manager and then stated, "You're no longer employed. We want your keys." Transcript at 29. Claimant gave her work keys to the senior manager. Claimant thought she was discharged and did not return to the workplace. Claimant did not retrieve her personal belongings from the workplace.

(6) Claimant was willing to continue working for the employer.

**CONCLUSIONS AND REASONS:** The employer discharged claimant but not for misconduct.

The first issue this case presents is the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The employer contended claimant told the senior manager immediately before she left for lunch on April 22, 2016, "I don't think I'm going to be able to do this [learn the computer software]" and "I think today will be my last day." Transcript at 15. The senior manager interpreted claimant's comment as a statement that she was quitting. Claimant denied she told the senior manager she was quitting, and made only the very contingent statement that if the training did not improve she might leave work. Transcript at 27, 28. Even if claimant actually stated what the senior manager said she did, that statement did not express an unequivocal, definite and present intention to quit work. Absent additional information from claimant, it was not reasonable for the senior manager to construe claimant's statement as a resignation. The first undisputed and objectively unambiguous expression of an intention to end the employment relationship occurred when the senior manager arrived unannounced at claimant's home and told her she was no longer an employee and to surrender her work keys. Most likely, claimant's work separation was a discharge on April 22, 2016.

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) 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. The employer carries the burden to prove claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Because the employer took the position at hearing that claimant quit, the employer did not offer any reasons for why it might have discharged her. We can discern no reasons for the discharge other than the senior manager misinterpreted the comment claimant made on April 22, 2016. That claimant made an ambiguous statement that was misunderstood as a resignation did not meet the definition of misconduct as set out in OAR 471-030-0038(3)(a). On this record, the employer did not show that it discharged claimant for misconduct.

Although the employer discharged claimant it did not show the discharge was for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-63616 is affirmed.

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

**DATE of Service:** August 26, 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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