

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1239**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 75814). Claimant filed a timely request for hearing. On October 11, 2016, ALJ Vincent conducted a hearing, and on October 18, 2016 issued Hearing Decision 16-UI-69392, reversing the Department's decision. On November 4, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Belfor USA Group, Inc. employed claimant as a carpenter and technician from April 17, 2016 until July 13, 2016.

(2) The employer prohibited claimant from making purchases using the employer's credit cards that were not authorized or were for personal purposes. The employer also expected claimant to supply his own hand tools for use on the employer's jobs and expected claimant to perform his work with reasonable skill. Claimant understood the employer's expectations.

(3) On May 28, 2016, claimant was working on a job in Myrtle Creek when he noticed that the homeowner's adult son, who was junk trader and lived on the property, had a wood stove that it appeared was for sale. Claimant discussed the stove with the son, and the son agreed to sell it to him for \$100. The son then told claimant to take the wood stove, and to pay for it the next time he was in Myrtle Creek. Claimant took the wood stove without paying for it. Claimant visited the property in Myrtle Creek intending to pay for the stove on two Saturdays after May 28<sup>th</sup>, but the son was not there and claimant was unable to pay for the stove. On July 9, 2016, claimant finally saw the son and paid him the \$100 that was owed for the stove. Sometime before July 13, 2016, the homeowner on the Myrtle Creek job called the employer and told the employer that claimant had not yet paid her son for the stove.

(4) Sometime before July 13, 2016, claimant was instructed to leave the job on which he expected to work that day to finish up another job. The job to which claimant was reassigned required him to place

some sheet rock in an open ceiling and to tape it. The ceiling was at a height of ten feet above the floor. Claimant did not have a ladder with him to enable him to work on the ceiling, and travelling from the location of the ceiling job to retrieve a ladder from the employer would require approximately one to one and a half hours round trip. Because the time required to complete the ceiling job was not great, claimant decided it was more cost effective to buy a ladder rather than waste the labor hours to retrieve a ladder that was already owned by the employer. Claimant called both his supervisor and the project manager to obtain authorization to purchase a step ladder but was unable to reach either and left messages. When they did not respond to his messages, claimant purchased a step ladder for \$42 to allow him to complete the work on the ceiling that day. After he used the step ladder, claimant placed it in the employer's van with other equipment of the employer's. Claimant turned in to the employer the receipt for the step ladder.

(5) Sometime before July 13, 2016, the employer discovered that claimant had purchased the step ladder and concluded he was not authorized to do so. The employer then reviewed receipts for other purchases claimant made using the employer's credit cards between approximately March and July 2016. The employer saw that on one receipt that claimant had signed an energy drink appeared among other items that claimant had purchased. However, claimant had mistakenly failed to purchase the energy drink separately from the items purchased for the job. Claimant later showed the receipt to his supervisor and told the supervisor he had mistakenly charged the energy drink to the employer, and the supervisor did not tell claimant that he needed to reimburse the employer for the price of the drink. The employer also saw that claimant had purchased a tape measure using the employer's credit card and concluded he was not authorized to do so since he was required to supply his own hand tools for his work. However, claimant had allowed other employees to use his own tape measures and they had not been returned to him. When his remaining tape measure broke one day, claimant's supervisor told him he could purchase a replacement using the employer's credit card. The employer further saw that claimant had purchased a tile cutting kit using the employer's credit card and concluded that it was for his personal use rather than for use on a job.

(6) Sometime before July 13, 2016, claimant was briefly assigned to perform some work for the employer at the Veridian apartment complex. When claimant went to that complex, he was not able to perform the cabinet and trim work that he had been assigned because the project was not far enough along for that work. Instead, claimant did what work he could on the project, which was some painting and completing a small amount of door trim. Claimant told the person in charge of that project that he was not able to perform the work which he was assigned and told the person in charge that someone else needed to complete the bulk of the cabinet and trim work. Later, the employer was informed that the trim work on that project was poorly done. The employer assumed claimant had done that trim work.

(7) On July 13, 2016, the employer discharged claimant for allegedly making unauthorized purchases for personal purposes using the employer's credit card, for allegedly not paying for a wood stove purchased from a customer, and for poor workmanship on the Veridian project. When claimant unloaded his hand tools from the employer's van that day, the step ladder he had purchased for the ceiling job to which he had been assigned was still in the van.

**CONCLUSIONS AND REASONS:** The employer failed to establish that claimant's discharge was for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. 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. The employer carries the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

With respect to claimant's allegedly unauthorized purchases using the employer's credit cards, claimant testified that, with the exception of the step ladder and one energy drink, he did not make any purchases without authorization or for personal purposes. Audio at ~21:14, ~26:10. In connection with the step ladder, claimant testified, and his witness corroborated, that he tried to reach both his direct supervisor and the project manager for their permission to make the purchase, and when he was not able to do so, made the decision that it would save the employer money if he purchased a ladder rather than incurring the labor cost to retrieve one of the employer's ladders with the resulting down time on work. Audio at ~23:36, ~41:40. As well, the employer did not dispute that claimant left the step ladder in the employer's van with the employer's other equipment, and did not take personal possession of it, as was also corroborated by claimant's witness. Audio at ~42:50. On these unrebutted facts, the employer failed to show claimant knew or should have known that, under the circumstances, purchasing the ladder probably violated the employer's expectations, or that claimant acted with indifference to the consequences of his actions. The employer therefore failed to establish that claimant's decision to purchase the step ladder was a willful or wantonly negligent violation of the employer's standards or an act in disregard of the employer's interests.

In connection with claimant's purchase of the energy drink, he testified it was an inadvertent error which he immediately disclosed to his supervisor and the supervisor only stated to him, "you have to watch it" but did not tell him to reimburse the employer for the price of the drink or to take any particular corrective measures. Audio at ~27:38. The employer did not present any evidence disputing claimant's testimony. Given the inaction of claimant's supervisor, the record fails to show claimant knew or should have known that failing to reimburse the employer for the accidental purchase of a single beverage probably violated the employer's expectations. The employer therefore failed to establish that any violation of the employer's expectations was willful or wantonly negligent, and not a good faith error.

Lastly, while the employer contended that claimant purchased a tile cutting kit for his personal use with the employer's credit card, claimant testified he had no recollection of making such a purchase. Audio at ~34:23. In addition, the employer failed to present evidence showing that claimant's alleged purchase of the tile cutting kit was for personal use, and not use on a job. The employer therefore failed to establish that claimant violated its expectations with respect to making purchases with the employer's credit card, let alone that he did so willfully or with wanton negligence.

With respect to claimant's alleged failure to pay for the wood stove, the employer did not rebut claimant and his witness's testimony that the homeowner's son allowed claimant to take possession of the stove before it was paid for. Audio at ~29:30, ~43:29. Nor did the employer rebut claimant's testimony that he paid the homeowner's son for the stove on July 9, 2016. On these undisputed facts, the employer did

not meet its burden to show that claimant failed to pay for the stove or that any of his actions in connection with the stove were a willful or wantonly negligent violation of the employer's standards.

Finally, with respect to claimant's allegedly poor workmanship on the Veridian project, the employer failed to rebut claimant's contention that he did not perform the work about which the employer was dissatisfied. Audio at ~32:00. On this record, the employer did not demonstrate that claimant violated the employer's standards by the quality of his work on the Veridian project, or that his behavior was willful or wantonly negligent.

The employer failed to establish that claimant's discharge was for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 16-UI-69392 is affirmed.

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

**DATE of Service:** November 30, 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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