

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1311**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 92923). Claimant filed a timely request for hearing. On October 26, 2016, ALJ Frank conducted a hearing, and on November 3, 2016, issued Hearing Decision 16-UI-70532, concluding the employer discharged claimant, but not for misconduct. On November 22, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Securitas Security employed claimant as a security officer from June 13, 1997 to June 29, 2016.

(2) The employer expected its employees to accurately record all time worked on their timesheets. Claimant was aware of the employer's expectation.

(3) On June 18, 2016, near the end of her shift, claimant was working her post at a work site when her daughter and two others stopped by the work site to discuss a personal matter. After they left, claimant stayed 16 minutes beyond her shift end (at 1400 hours) to complete a required report regarding visitors. Claimant completed her work at 1416 but recorded her end time as 1400, the scheduled end of her shift. Claimant did not believe underreporting her time would be a problem because she did not want or expect to be paid for the extra sixteen minutes.

(4) A few days later, the employer's site supervisor reported to the Human Resources manager that he had learned that claimant had visitors during her shift on June 18 which he believed violated employer policy. The employer investigated, could not determine if claimant was at fault on that issue or any other issue, but learned that she had worked until 1416 after reporting her end time as 1400, which violated the employer's policy prohibiting employees from misrepresenting their work time on timesheets.

(5) On June 29, 2016, the employer discharged claimant for falsification of her time record on June 18, 2016.

**CONCLUSIONS AND REASONS:** The employer discharged claimant for an isolated instance of poor judgment, and not 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 are not misconduct. OAR 471-030-0038(3)(b). An act is isolated if the exercise of poor judgment is a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). An act constitutes poor judgment if it involves a decision to willfully violate an employer's reasonable standard of behavior or a conscious decision to take action that results in a wantonly negligent violation of such standard. OAR 471-030-0038(1)(d)(C). Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

In Hearing Decision 16-UI-70532, the ALJ concluded that claimant understood the employer's reasonable expectation that she accurately record all time worked on her timesheet and violated that expectation on June 18 by misrepresenting her end time. The ALJ concluded, however, that the employer failed to establish that claimant was at least wantonly negligent because he accepted claimant's testimony that it did not occur to her that she was violating the employer's expectation at the time she completed her time sheet. Hearing Decision 16-UI-70532 at 3. While we disagree with the ALJ's conclusion that claimant was not at least wantonly negligent in completing her time sheet, we agree with his conclusion that claimant was not discharged for misconduct under ORS 657.176(2)(a).

Claimant knew the employer expected her to refrain from falsely recording her time on her timesheet, and by reporting her end time as 1400 when she knew she had or would be working 16 minutes past that time, demonstrated conscious indifference to complying with a known and reasonable employer expectation that she accurately report all time worked. Consequently, claimant's actions in reporting her end time as 1400 was at least wantonly negligent.

However, claimant's time sheet violation was no more than an isolated instance of poor judgment. There was no dispute that claimant had never been written up or even verbally warned in the past for a policy violation. And even though the employer's records show that claimant ostensibly violated its policy against having visitors while "on post" that day and on previous days, the employer's witness testified that after its investigation of all matters, it could not determine if claimant was at fault for any

policy violation other than misreporting her time. Exhibit 1; Audio Record ~ 11:00 to 11:30. Accordingly, on this record the employer failed to establish that claimant's time reporting policy violation on June 18 was anything more than an infrequent occurrence rather than a repeated act or part of a pattern of other willful or wantonly negligent behavior, and therefore was isolated.

OAR 471-030-0038(1)(d)(D) provides that some conduct, even if isolated, may exceed poor judgment, including unlawful conduct, conduct tantamount to an unlawful act, and conduct that causes a breach of trust in the employment relationship or makes a future employment relationship impossible. Here, claimant's time reporting violation and working off the clock was not unlawful or tantamount to an unlawful act, even though had the employer failed to pay claimant for her time off the clock, such conduct would have been unlawful. Claimant explained to the employer that she did not believe underreporting her time would be an issue because she was not stealing money from the employer. Exhibit 1. Claimant's explanation was plausible, and viewed objectively, a single failure to claim sixteen minutes worked is not conduct of the sort that would make a continued employment relationship impossible or that reasonable discipline would not correct.

In sum, we conclude that the employer discharged claimant for an isolated instance of poor judgment, which is not misconduct. Accordingly, we agree with the ALJ that claimant is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 16-UI-70532 is affirmed.

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

**DATE of Service:** December 29, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.