

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0341**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 131207). The employer filed a timely request for hearing. On March 9, 2017, ALJ Murdock conducted a hearing, and on March 14, 2017 issued Hearing Decision 17-UI-78836, affirming the Department's decision. On March 20, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained an extensive amount of information not offered into evidence during the hearing. While claimant contended that she was unable to present this information at the hearing because "the opposing party presented completely new statements and accusations that I was not aware of," EAB found in claimant's favor without considering claimant's argument or the new information she presented. Because EAB had no need to take claimant's argument into account, EAB did not consider it when reaching this decision.

**FINDINGS OF FACT:** (1) Lane County School District #19 employed claimant as a substitute teacher from October 23, 2017 until November 8, 2016.

(2) The employer expected that claimant would maintain control both inside and outside the classroom, exhibit professional behavior and refrain from argumentative displays. Claimant understood the employer's expectations as a matter of common sense and as she reasonably interpreted them.

(3) On January 13, 2016, claimant was assigned to teach at Elizabeth Paige Elementary School. The students in the classroom to which claimant was assigned were very disruptive and acted out. Claimant requested assistance in the classroom, but none was forthcoming. After the children left for the day, claimant spoke to the principal about her classroom experience. Claimant complained about the students and the assignment and asked to leave work about a half-hour early. The principal became

angry at claimant. A secretary at the school contacted the employer's human resources department and informed it that claimant had been "confrontational" and "angry" that day. Transcript at 17. The principal later contacted personnel in the employer's human resources department and stated that she did not want claimant to substitute teach at that school again.

(4) On March 23, 2016 and April 26, 2016, claimant was assigned to teach at Agnes Stewart Middle School. In June 2016, the principal of that school contacted personnel in the employer's human resources department and told them that she did not want claimant to substitute teach at that school again. The principal based this decision on the report of a regular teacher that claimant did not follow lesson plans, "had a hard time managing student behavior" and was "argumentative" with students. Transcript at 13.

(5) On April 28, 2016, claimant was assigned to teach at a high school. A student at the school reported to the principal that the student had previously obtained a restraining order against claimant. The principal discussed this matter with claimant. Claimant told the principal that no such restraining order had been issued. The principal thought that claimant was "argumentative" while speaking to her. Transcript at 36. The principal instructed claimant to leave the school premises. The principal told the employer's human resources department that claimant was excluded from returning to the school as a substitute teacher.

(6) On May 25, 2016, claimant was assigned to teach at Riverbend Elementary School. The principal of that school reported to the employer's human resources department that claimant had "struggled" with her teaching duties that day and had "abrupt interpersonal interactions" with staff. Transcript at 17. The principal told the human resources department that she did not want claimant to return to that school.

(7) On November 4, 2016, claimant was again assigned to Riverbend Elementary School. At around the time claimant arrived to begin teaching, staff at the school realized that claimant had been excluded from teaching at the school by the predecessor principal. Claimant was not permitted to enter the classroom to which she had been assigned and was told that another teacher would be teaching the class. Claimant later saw the principal of that school and stated she thought she should at least receive gas money for traveling to the school. The principal contacted the employer's human resources department and stated that claimant had engaged in a "big rant." Transcript at 9.

(8) As of November 4, 2016, the principals of 15 schools had reported that they did not want claimant to substitute teach at their schools again. On that day, the employer mailed a letter to claimant informing her that due to the number of schools from which she was banned as a substitute teacher she would not be receiving any further assignments from the employer. Exhibit 1 at 1. The employer intended this letter to operate as a notice of discharge.

(9) As of November 8, 2016, claimant had not received the November 4, 2016 letter and she reported for a previously scheduled substitute teaching assignment on that day. After November 8, 2016, the employer did not receive further assignments as a substitute teacher. The employer discharged claimant on November 8, 2016.

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

The employer's witnesses testified at hearing that the employer discharged claimant because, as of November 4, 2016, she was banned from substitute teaching in 15 schools by their principals. Transcript at 4, 5. However many schools had excluded claimant, the employer still must show that claimant's exclusion resulted from her misconduct in order to disqualify her from benefits. Claimant vigorously disputed that she was excluded from teaching at any of the employer's schools due to unprofessional or argumentative behaviors or for any behaviors that otherwise violated the employer's standards. Transcript at 71; *see also* Transcript at 59, 63, 65, 67, 70. The employer did not offer any information about the incidents that led to claimant's exclusion from most of the 15 schools, and presented only the cursory, conclusory information set out in the findings of fact about claimant's exclusion from 4 of the 15 schools. Transcript at 19. The narratives that the employer presented at hearing about claimant's behavior at these 4 schools, although they negatively characterized claimant's behavior, lacked the concrete, specific detail required to conclude that claimant's behavior was so objectively "argumentative," "angry" and "confrontational" that no reasonable person would not have considered it to be a violation of the employer's reasonable standards prohibiting such behavior. On this record, the employer did not meet its burden to show that claimant violated the employer's expectations willfully or with wanton negligence.

The employer discharged claimant but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-78836 is affirmed.

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

**DATE of Service:** April 14, 2017

**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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