

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0388**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct but her benefit rights based on wages earned prior to the date of discharge were not canceled (decision # 100509). On January 27, 2017, the Department issued a corrected administrative decision # 100509 that corrected non-substantive errors in the decision that was initially issued. Claimant filed a timely request for hearing. On March 20, 2017 ALJ Lewis conducted a hearing, and on March 21, 2017 issued Hearing Decision 17-UI-079304, affirming the Department's decision. On March 30, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. In the written argument, claimant noted, "I was concerned if it [the discharge] was related to race and discrimination." Claimant did not otherwise mention matters of race and discrimination in her argument or raise those issues at all at hearing. Absent such detail, there is an insufficient basis in the record for consideration of them.

**FINDINGS OF FACT:** (1) New Avenues for Youth, Inc. employed claimant as housing case manager from May 21, 2015 until November 17, 2016. The employer was a non-profit corporation that provided services to homeless and at-risk youth.

(2) As housing manager, claimant was authorized to make purchases for the youth the employer's clients. Among other things, claimant was authorized to pay "youth engagement" expenses, including spending small amounts on appropriate discretionary items for the clients, such as, for example, candy, drinks, cups of coffee and birthday treats. The employer provided claimant with a credit card to make these purchases.

(3) The employer expected claimant to make charges on the credit card she was given only for work-related purchases rather than for personal use. When claimant made purchases for the clients, the employer required her to retain the receipt that was issued, to write the client's name on the receipt and to sign each receipt with her own name. The employer required claimant to prepare a monthly report

detailing the charges she had made in that month, and for each charge, identifying the client for whom that expense had been incurred. The employer expected claimant to turn in the monthly report and all receipts underlying the report to the employer after the close of the month. Claimant understood the employer's expectations.

(4) On May 27, 2017, the housing manager met with claimant to discuss the records the employer required to ensure that its funds were properly spent on behalf of its clients, including what needed to be shown on the receipts for items purchased and the information needed to complete the monthly summary report. Before she met with claimant, the housing manager had observed that claimant was not regularly keeping accurate records for purchases she made on behalf of clients and not submitting the required records to the employer regularly, with the result that the employer was not receiving reimbursement from its funding sources for some of the client purchases that claimant made. At the conclusion of the meeting, the housing manager asked claimant to send an email to the housing manager's supervisor explaining the mistakes she had made and why they had occurred. Claimant did so and apologized to the supervisor for her mistakes. After May 27, 2017, claimant's record-keeping and its accuracy improved.

(5) Sometime after October 3, 2016, claimant submitted a monthly report detailing purchases she had made for clients using the employer's credit card during the prior month and the receipts documenting those purchases. When the housing manager was performing a reconciliation of those purchases, she noticed that a tobacco product, cigarillos, appeared as having been purchased on three of the receipts, which was not a product that should have been purchased for the employer's underage clients. The housing manager investigated those purchases. Upon investigation, the housing manager determined that a receipt which claimant had signed and on which she had written "C" as the name of the client for whom the purchase was made, showed that at 9:41 a.m. on Wednesday, September 28, 2016, claimant had used the employer's credit card to purchase cigarillos and a drink at a convenience store very near the workplace, ostensibly for "C." However, "C" was a client on probation or parole and the beauty school that "C" was attending sent the employer records of "C"'s school attendance. Those school records showed that "C" was clocked-in at school when the purchase was made and she had not clocked out near in time to the time of the purchase, as she would have done if she had left the school premises. The housing manager also determined that a receipt claimant had signed and on which she had written the name of client "K" as the client for whom the purchase was made showed that on Monday, October 3, 2016 at 8:36 a.m. claimant had used the employer's credit card to purchase cigarillos and a cup of hot coffee at a convenience store on NW Lovejoy Street, near downtown Portland, ostensibly for "K." However, "K" was on parole and the school that "K" attended was in Gresham, several miles away from the location of that convenience store. The school in Gresham sent the employer daily records of "K"'s attendance, and those records showed that "K" was at school at 8:36 a.m., and "K" was not allowed to leave the school campus. With respect to the third receipt that showed the purchase of cigarillos, the employer was not able to obtain independent evidence that the client was not present when the purchase was made and likely would not have received the purchased items.

(6) On November 15, 2016, the housing manager met with claimant to discuss the purchases made on September 28 and October 3, 2016. Claimant stated that she purchased the cigarillos for herself, had been in a hurry and had mistakenly used the employer's credit card rather than her own. Claimant stated that she had purchased the drink and the hot coffee shown on the receipts for clients "C" and "K," respectively.

(7) On November 17, 2016, the housing manager again met with claimant. The housing manager told claimant that she had independent corroboration that clients “C” and “K” were not present when claimant made the purchases that she indicated on receipts were for them. Claimant responded, “What do you want me to say?” Transcript at 18. On November 17, 2016, the employer discharged claimant for charging the employer for the purchase of the cigarillos and drink on September 28, 2016 and the cigarillos and hot coffee on October 3, 2016 for herself and dishonestly representing that those purchases were for “C” and “K,” respectively.

**CONCLUSIONS AND REASONS:** 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 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).

Claimant contended that she did not knowingly make any personal purchases using the employer's credit card, that the drink and the coffee were purchased for clients and that, without her knowledge, she accidentally purchased the cigarillos on the employer's credit card rather than on her own. Transcript at 24, 25. However, claimant's testimony at hearing was often contradictory and implausible and lacked credibility. For example, claimant testified adamantly that she was not aware that the employer had concerns about the records she kept to document purchases made on behalf of clients before September 2016, yet she agreed that when she met with the housing manager, apparently on May 27, 2016, that the manager asked her to send an email to the manager's supervisor explaining the errors she had made in her recent reports of expenses she incurred on behalf of clients. Transcript at 29. It does not make sense that claimant would not know that such concerns existed if she was requested to give an explanation to her manager's superior. As well, in the course of testifying that she did not recall the purchases made on September 28 and October 3, 2016 because the employer had not shown those actual receipts to her on November 15, 2016, claimant made a point of stating, first, that she was unable to refer to her monthly report summarizing the purchases that she made since it was “no longer on my computer” and then almost immediately contradicted herself when she further stated the summary report was not deleted from the computer and that “it was on the computer if [she had] wanted to look at it.” Transcript at 21, 22. In addition, claimant strenuously insisted that neither the drink purchased on September 28 nor the hot coffee purchased on October 3, 2016 could have been purchases she made for herself, either intentionally or accidentally, rather than for the clients, and then almost instantly appeared to reverse position and stated the drink was probably for “somebody else” and “they were both [the purchases of the drinks and the cigarillos] accidents.” Transcript at 24, 25. Given those inconsistencies, there is reason in this record to question the reliability of claimant's testimony at hearing.

While it is a matter of common sense that claimant could have inadvertently used the employer's credit card to make personal purchases, either of the cigarillos or the drinks, the undisputed circumstances strongly suggest otherwise. Because claimant wrote the clients' names on the receipts for the purchases and signed her name to both receipts, it is not likely that she would not have noticed that there were

cigarillos, which she appeared to concede were personal purchases, on the receipts unless she intended to pass the cost of those purchases on to the employer. This conclusion is reinforced by claimant's later preparation of the monthly report in which she would have actually entered both the clients' names and indicated that cigarillos were purchased for both of them. It is not likely she would have neglected to comprehend the content of what she was entering into the report as purchases made for those clients or that her attribution of these purchases to clients could have been or was inadvertent or an accident. Further, the evidence the employer presented as to the whereabouts of client "K" at the time the cup of hot coffee is persuasive that "K" was not present when the purchase was made, but several miles away, and, although claimant argued that she often made purchases for clients when they were not present, it is patently implausible that she would purchase a disposable cup of hot coffee to give to "K" when she next saw him at some unspecified time in the future or to leave in his room in the housing he occupied as a surprise treat for him. Transcript at 26. Likely, claimant was not purchasing the hot coffee or the drink shown on the receipts for clients "C" and "K," since they were not present at the time of purchases, but for herself, and by charging those purchases on the employer's credit card, placing the clients' names on and signing the receipts, and entering those purchases in the monthly summary report of expenses incurred for clients, claimant could only have known that she was passing the cost of those personal purchases on to the employer and knowingly and deliberately intended this result. On this record, claimant willfully violated the employer's expectations by the personal purchases she made on September 28 and October 3, 2016.

Claimant's willful behavior in violation of the employer's expectations may be excused from constituting misconduct if it was an isolated instance of poor judgment within the meaning of OAR 471-030-0038(3)(b). To be considered an isolated instance of poor judgment, the behavior at issue must have been 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). The behavior at issue also must not exceed "mere poor judgment" by, among other things, causing an irreparable breach of trust in the employment relationship or making a continued employment relationship impossible. OAR 471-030-0038(1)(d)(D). Here, claimant intentionally and dishonestly attributed personal purchases to clients and tried to pass them on to the employer for payment on two occasions that were separated in time only by five days, September 28 and October 3, 2016. Rather than being isolated occurrences, claimant's dishonesty was repeated and formed a pattern of behavior. As well, the type of deceit and dishonesty that claimant evidenced by her behavior on September 28 and October 3, 2016 reasonably caused a fundamental rupture in the employment relationship. On these facts, a reasonable employer would objectively conclude that given the level of duplicity claimant demonstrated, it could no longer trust claimant to behave with integrity in the workplace, particularly in the expenditure of the employer's funds. For both of these reasons, claimant's willful violations of the employer's standards on September 28 and October 3, 2016 were not the types of behavior that may be excused as an isolated instance of poor judgment.

Nor were claimant's behaviors on September 28 and October 3, 2016 excused from constituting misconduct as good faith errors. Claimant did not contend that a misunderstanding of the employer's standards led her to charge personal purchases to the employer and such a contention would be implausible, nor, given our conclusion that claimant intentionally misused the credit card, does the record support a finding that her conduct was the result of an inadvertent use of the employer's credit card or a belief that she had used the employer's credit card and expenditure reporting system correctly. Accordingly, claimant's behavior was not a good faith error and is not excusable on this ground.

The employer discharged claimant for unexcused misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-79304 is affirmed.

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

**DATE of Service:** April 25, 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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