

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0441**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 104907). The employer filed a timely request for hearing. On April 3, 2017, ALJ Janzen conducted a hearing, and on April 4, 2017 issued Hearing Decision 17-UI-80203, affirming the Department's decision. On April 17, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

We considered the employer's written argument, to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Marvin Wood Products employed claimant from April 20, 2015 to February 2, 2017 as a finger joint utility.

(2) The employer prohibited employees from engaging in the "unauthorized use of another employee's time badge." Exhibit 1. Claimant received and read the employer's policy on March 9, 2016.

(3) Claimant's wife also worked for the employer. On January 30, 2017, claimant's wife did not report to work. Absences could be requested at the employer's timeclocks. Shortly after claimant clocked in for work on January 30, he used his wife's time badge at the timeclock to request an absence for his wife for a later date. Claimant had his wife's permission to do so.

(4) Later on January 30, 2017, claimant's supervisor discovered and confirmed that claimant had used his wife's time badge to request time off for her. After a three-day suspension, the employer discharged claimant for violating its time badge use policy.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ and conclude that 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 bears the burden of proving misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant because he used a time badge belonging to another employee, his wife. Although it is undisputed that claimant used his wife's time badge, the record fails to show misconduct. Claimant testified that he believed he was authorized to use his wife's time badge under the employer's time badge use policy because his wife gave him permission to use her time badge. Transcript at 30. There was no evidence contradicting claimant's testimony that his wife gave him permission to use her time badge. However, the employer argued that claimant's testimony about his understanding of the employer's policy was not credible because, when his supervisor initially questioned claimant about his actions, his only "defense" was to say that he "never even thought about it." Employer's Written Argument, Transcript at 8. We do not find claimant's statement to his supervisor inconsistent with his testimony at hearing, nor do we find it remarkable that he did not provide additional explanation on January 30. Moreover, it is reasonably plausible that claimant misunderstood the employer's policy because the policy does not explicitly state what comprises "unauthorized use" under the policy. Exhibit 1. Nor is there evidence to show that claimant knew or should have known the meaning of "unauthorized use" based on his prior training or warnings. The preponderance of the evidence shows that claimant likely held a sincere but mistaken belief that the employer permitted him to use his wife's time badge to request time off work for her. Thus, his mistake was the result of a good faith error. OAR 471-030-0038(3)(b) specifically states that good faith errors are not misconduct.

For the foregoing reasons, we conclude that claimant's discharge was not the result of misconduct on claimant's part. Claimant is, therefore, not disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Hearing Decision 17-UI-80203 is affirmed.

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

**DATE of Service:** May 8, 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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