

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0489**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144313). Claimant filed a timely request for hearing. On April 26, 2017, ALJ Murdock conducted a hearing, and on April 28, 2017 issued Hearing Decision 17-UI-82133, concluding claimant's discharge was not for misconduct. On May 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** In Hearing Decision 17-UI-82133, the ALJ made an evidentiary ruling stating "No exhibits were offered or admitted into evidence." The record shows, however, that the ALJ marked and admitted Exhibit 1 into evidence, and that the ALJ declined to mark or consider a packet of information claimant offered into evidence because the ALJ had not yet received them at the time of the hearing. Audio recording at ~ 2:50-3:30. EAB considered Exhibit 1 when reaching this decision, and did not consider the claimant's packet because the ALJ did not admit those documents into evidence.

**FINDINGS OF FACT:** (1) St. Charles Health Systems, Inc. employed claimant as a phlebotomist from May 1, 2015 to March 6, 2017.

(2) The employer prohibited employees from disclosing confidential patient information. Claimant understood the employer's prohibition.

(3) On February 22, 2017, claimant took a picture of her computer screen and posted it to a social media account. Her intent in posting the picture was to demonstrate how busy her department was at the time. Claimant reviewed the picture before posting it and thought that it did not show any confidential patient information. She did not notice that the picture included four patients' names and the reasons they were visiting the employer's emergency room. Approximately ten hours after posting the picture, claimant's coworker suggested that claimant remove the picture from her social media account and claimant did so.

(4) By February 27, 2017, the employer received a report that claimant had posted the picture to her social media account and that patient information was visible if the picture was enlarged. The employer met with claimant about the picture. Claimant told the employer that she had not realized any names were visible in the picture. The employer concluded that claimant had violated its prohibition against disclosing confidential patient information, and, on March 6, 2017, discharged claimant.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's discharge was 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. 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.

There is no dispute that claimant violated the employer's expectations by posting a picture that included patient information to her social media account. For claimant's conduct to be considered misconduct, however, it must have been willful or wantonly negligent. Here, claimant examined the picture for patient information before posting to her social media account, and inadvertently posted patient information because she missed seeing it was visible despite her exercise of care to ensure it did not. While claimant might have been negligent in posting the patient information, the care claimant took to try to ensure that she did not demonstrate that her conduct was not willful or wantonly negligent. Claimant's discharge was, therefore, not for misconduct, and she may not be disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 17-UI-82133 is affirmed.

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

**DATE of Service:** May 17, 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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