

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0532**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84900). Claimant filed a timely request for hearing. On April 20, 2017, ALJ S. Lee conducted a hearing, and on April 28, 2017 issued Hearing Decision 17-UI-82143, affirming the Department's decision. On May 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sally Beauty Supply, LLC employed claimant, last as an assistant manager from April 4, 2006 to February 14, 2017.

(2) The employer has a loss prevention policy that, among other things, prohibited employees from falsifying time records. At hire, the employer issued claimant a copy of the handbook that included that policy, and claimant signed an acknowledgment that she received the policy and would familiarize herself with its contents. Claimant knew the policy.

(3) On more than one occasion, claimant saw the store manager at her location leave work earlier than her shift ended. The manager later asked claimant to alter her time records to show that she stayed for her entire shift, and claimant did so on more than one occasion, knowing at the time that she was falsifying the manager's time records. Claimant "knew it was wrong" to alter the manager's time records that way. Transcript at 16. Claimant felt "ashamed" of having done so, and stopped altering the manager's time records except on occasions where she thought it was "legit." Transcript at 16-17.

(4) After claimant stopped falsifying her manager's time records, claimant knew the manager was continuing to have someone else falsify her time records. Claimant did not report the manager or her coworker to the employer even though she knew she "should have," because she had personal issues, "chose not to get involved in the workplace drama" and did not "have time for it." Transcript at 18.

(5) In approximately January 2017, another person reported the manager's conduct to the district manager. The employer investigated. On approximately February 3, 2017, the employer's district manager discussed the manager's time records with claimant. Claimant told the district manager that she "rarely alters [the manager's time] punches." Transcript at 8. On approximately February 7, 2017, the district manager spoke with claimant again. During that conversation, claimant "admitted to being a part of it for a short time." Transcript at 23.

(6) On February 14, 2017, the employer discharged claimant for falsifying her manager's time records and failing to report the manager's ongoing practice of having others falsify her time records.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's discharge was 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 of an employee. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had the right to expect claimant not to falsify her manager's time records, and claimant understood the employer's policy. Claimant suggested at times during her testimony at hearing that she altered the manager's time records without questioning the practice. Transcript at 19-20, 27. Her testimony on those points was not credible given that she also admitted to the employer and at the hearing that she knowingly falsified her manager's time records on more than one occasion. Transcript at 34. It is more likely than not that claimant repeatedly and willfully violated the employer's loss prevention policy by falsifying her manager's time records.

The employer also had the right to expect claimant to report loss prevention issues, such as the manager's ongoing practice of using others to falsifying her time records and claim that she had worked hours she had not. Claimant testified that she "should have" reported the manager to the employer, suggesting that she understood the employer's expectation. Even if she had not, claimant should have understood that any reasonable employer would expect her, as an assistant manager, to report instances where she knew an employee was falsifying her time records to the employer, as a matter of common sense. Claimant's failure to report the manager's ongoing practice of falsifying her time records to the employer, on this record, was a conscious failure to act under circumstances where she knew or should have known her failure to report would violate the employer's expectations, and her failure to act demonstrated her indifference to the consequences of her conduct. Claimant's ongoing failure to report the manager's conduct to the employer was, therefore, wantonly negligent.

Claimant testified that as far as what she did it was “an isolated instance” and “not an ongoing thing,” and that “if they continued doing it after I chose not to be a part of it, that’s on them. Not on me.” Transcript at 22, 24. Although an isolated instance of poor judgment may be excused from constituting misconduct, claimant’s conduct was not excusable. An isolated instance of poor judgment is defined, in pertinent part, as a single or infrequent exercise of poor judgment rather than a repeated act or pattern of other willful or wantonly negligent conduct. OAR 471-030-0038(1)(d). Claimant admitted that she falsified her manager’s time records on more than one occasion. Each occasion on which claimant decided to falsify the time record would necessarily have required claimant to form a new judgment to falsify or not falsify the manager’s time records, making those instances repeated willful violations of the employer’s expectations. Likewise, although claimant apparently stopped falsifying her manager’s time records at some point, she admitted that she “heard rumors,” and “there was always gossip and there was always rumors” about the manager’s time record falsification, suggesting that the issue arose more than one time. Transcript at 18. Each time claimant heard a rumor or gossip about the manager’s time record falsification and failed to report the manager’s practice to the employer, her decision not to report was the result of a separate judgment, making claimant’s decisions not to report the manager to the employer repeated wantonly negligent acts that cannot be considered isolated. In sum, claimant’s misconduct was comprised of repeated acts or a pattern of willful or wantonly negligent acts, which were not “isolated” and cannot be excused.

Claimant’s conduct is also not excusable as a good faith error. Claimant knew that falsifying her manager’s time records was wrong at the time she did it, and knew she should have reported the ongoing practice to the employer. She did not believe in good faith that she was not falsifying the manager’s time cards during the instances when she changed the time records to reflect the manager had worked her full shift when she had knowledge that the manager had not done so, she did not sincerely believe that others were not falsifying the manager’s time cards when she knew the practice was ongoing and simply chose not to get involved, and she did not sincerely believe the employer would consider it acceptable for her or anyone else to falsify the manager’s time records.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-82143 is affirmed.

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

**DATE of Service:** May 23, 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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