

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0571**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 80139). Claimant filed a timely request for hearing. On May 4, 2017, ALJ M. Davis conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 17-UI-82547, concluding claimant's discharge was not for misconduct. On May 11, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer's human resources manager asked for a new hearing on the grounds that she was sick and unable to attend the May 4, 2017 hearing. The employer's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the employer's HR manager argued that attending the hearing was a duty associated with her position, and since she was sick the employer was unable to attend. The argument did not address, much less show, what, if any, attempt was made to have someone else participate in the hearing, even though it was the HR manager's job to appear at the hearing, when the HR manager was too sick to do so, nor did the employer show what, if any, attempt was made to have someone secure a postponement of the hearing so the HR manager could attend when she was well enough to do so. The employer's request to have EAB consider new information is, therefore, denied.

**FINDINGS OF FACT:** (1) Taylor Transport, Inc. employed claimant as a truck driver from 2016 to March 17, 2017.

(2) Prior to working for the employer, claimant had never before used a drop axle. The employer expected claimant to use one, but provided him with minimal training. Thereafter, claimant used the drop axle when he remembered to do so, but because of his inexperience with drop axles and inadequate training on the use of drop axles, claimant sometimes forgot.

(3) Prior to March 17, 2017, the employer issued claimant a verbal and a written warning for failing to use the drop axle prior; claimant subsequently tried to remember to do so. On March 17, 2017, claimant forgot to use the drop axle again. The employer's dispatcher contacted claimant and yelled at him about it, and, on March 17, 2017, the employer discharged claimant for failing to use the drop axle.

**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. Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The preponderance of the evidence suggests that claimant repeatedly violated the employer's expectations during his term of employment by failing to use the drop axle despite having been trained and instructed to do so. However the preponderance of the evidence also suggests that the reason claimant failed to use the drop axle was that he forgot about it, probably as a result of his inexperience using a drop axle and the inadequacy of the training he received. Claimant's conduct therefore appears to have resulted from a lack of job skills and experience. The administrative rules applicable to unemployment insurance benefits determinations specifically states that conduct resulting from a lack of job skills or experience is not misconduct. Claimant's discharge was, therefore, not for misconduct, and he may not be disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 17-UI-82547 is affirmed.

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

**DATE of Service:** June 5, 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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