

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0730

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 114925). The employer filed a timely request for hearing. On May 31, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-84574, concluding claimant's discharge was for misconduct. On June 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) US Bank National Association employed claimant from June 18, 2012 to March 22, 2017. She last worked for the employer a sales service manager. In the employer's hierarchy, claimant's position was second only to that of the branch manager. In addition to her work with the employer between 2012 and 2017, she had previously worked for the employer for approximately three years and worked for another bank for approximately three years.

(2) The employer prohibited employees from conducting their own transactions and prohibited employees from transferring the employer's collected funds into a customer account unless authorized by the branch manager. The employer notified claimant of its policies and provided her with training.

(3) The employer required that an account hold collected funds or be tied to a credit line or other bank product before permitting a customer to purchase a cashier's check or withdraw cash. The employer granted its branch managers discretion to determine whether or not to permit payment of an automatic withdrawal or other debit from an account if there were insufficient funds to cover the withdrawal based upon the manager's assessment of the customer's creditworthiness, for example, the length of time the customer had banked with the employer, whether there were any scheduled automated deposits, and whether the customer had purchased overdraft protection. Claimant's branch manager, in turn, delegated authority to determine whether to allow a customer to overdraw his or her account to her subordinate managers and teller coordinators.

(4) On December 19, 2016, claimant had under \$30.00 in her account. Claimant was not allowed to look at her own customer profile, so she asked a subordinate employee to look at her customer profile and tell claimant what her overdraft limit was. The subordinate employee complied and told claimant the limit was up to \$1,500.00. Claimant then asked the subordinate employee to withdraw \$1,000.00 in cash from her account, causing claimant's account to be overdrawn by over \$970.00. The subordinate employee complied. Claimant's account remained overdrawn until December 30, 2016. Neither the subordinate nor claimant had sought or obtained the branch manager's approval for the transaction.

(5) On February 6, 2017, claimant had \$162.40 in her account. After banking hours had ended, she asked the subordinate employee to process a transaction for her in which she purchased a \$475.00 cashier's check and withdrew \$435.00 in cash, causing her account to be overdrawn by almost \$1,000.00. The subordinate employee complied. Claimant's account remained overdrawn until February 22, 2017. Neither the subordinate nor claimant had sought or obtained the branch manager's approval for the transaction.

(6) On March 20, 2017, the employer's corporate security department, which monitored employees' accounts for suspicious activity, reported claimant's overdrawn account activities to the district manager. On March 22, 2017, the district manager interviewed claimant. Claimant suggested that she had seen others authorize accounts to be overdrawn in the past, but also told the district manager at that time that she understood that overdrawing her account violated policy, required the branch manager's prior approval and she should not have done it.

(7) On March 22, 2017, the employer discharged claimant for repeatedly overdrawing her account.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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. 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. Good faith errors and isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b).

The employer had the right to expect claimant not to process her own transactions, and not to withdraw more cash from the bank than she had available to her in her own account or credit line. The employer had policies to that effect and provided claimant with training to follow them. Claimant was a bank employee with approximately 11 years of experience, and had been promoted from working as a teller until she worked as the second in charge under the branch manager. Claimant also acknowledged to the employer at the time of her discharge that she knew the policies, and testified to that effect at the hearing. For those reasons, claimant knew or should have known the employer expected her not to be

involved in processing her own transactions and not to withdraw more cash from the bank than she had available to her in her own accounts.

Claimant nevertheless argued that she thought it was permissible for her to ask her subordinate employee to overdraw her accounts. Although good faith errors are not misconduct, each of the examples claimant described to support her claim that she or her subordinate had the authority to overdraw her account involved decision-making on the part of the branch manager, not herself. *See e.g.* Audio recording at ~ 21:15. Additionally, none of claimant's examples involved the branch manager authorizing that a customer overdraw his or her account by withdrawing cash from the bank, rather than by covering an automatic payment or payment of an outstanding draft, and the employer's district manager testified that cash withdrawals without collected funds or a line of available credit were not to occur under any circumstances, and claimant did not rebut that assertion by describing an experience where such an occurrence had been authorized or she had been delegated the authority to allow a customer to do such a withdrawal. Claimant also acknowledged that her bank had recently been assigned to a new district, and that while she thought her branch manager was permissive in terms of authorizing overdrawn accounts she did not know what the new district management's expectations were with respect to overdrawn accounts. Audio recording at ~ 20:15-20:45. For those reasons, it appears more likely than not that claimant's decisions to overdraw her accounts were not the result of good faith errors on her part.

Claimant also suggested that, with respect to the two overdraw incidents in question, she was acting as a customer rather than a manager, and she implied either that she, in her capacity as a sales service manager, had the authority to authorize the teller coordinator to process claimant's transactions as a customer, or that the teller coordinator she was using to process her transactions was the one at fault for not seeking management approval for the transactions. *See e.g.* Audio recording at ~ 18:45-19:05. We disagree. At least one of the transactions occurred after hours when no customer could have conducted business, and claimant used the subordinate employee to look at the profile information that was not available to a regular customer, making it unlikely that claimant was merely acting as a customer when she asked for the transactions. It is also notable that claimant was a manager who significantly outranked the teller coordinator in the employer's hierarchy, meaning that claimant was acting with the apparent authority her management position gave her in asking the subordinate teller coordinator to withdraw funds on her own behalf, and the subordinate teller would have had no reason to seek out permission from the branch manager under the circumstances. Claimant was, therefore, most likely acting in the scope of her job when she asked the teller coordinator to withdraw funds for her, and was at least partially responsible for the policy violation that resulted.

In sum, it is more likely than not that claimant understood at the time of the December 19th and February 6th overdraw incidents that she was violating the employer's policies by withdrawing cash she did not have, and that she knew or should have known that she required branch manager approval before proceeding with those transactions. It is implausible that a bank employee of claimant's position and with her years of experience would believe it was acceptable to act as she did. Claimant's conduct was therefore in conscious disregard of the standards of behavior the employer had the right to expect of her, and demonstrated her indifference to the consequences of her conduct, making her conduct on both occasions wantonly negligent.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. An isolated instance of poor judgment is 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)(A). Claimant's wantonly negligent exercises of poor judgment occurred on December 19, 2016 and February 6, 2017, thus constituting repeated wantonly negligent acts. Because her conduct was not isolated, it is not excusable.

For the reasons set forth, the employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 17-UI-84574 is affirmed.

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

DATE of Service: July 11, 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. 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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