

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0860**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 92126). Claimant filed a timely request for hearing. On June 22, 2017, ALJ Amesbury conducted a hearing, and on June 27, 2017 issued Hearing Decision 17-UI-86696, reversing the Department's decision. On July 17, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Key Bank National Association employed claimant as a bank teller from September 10, 1990 until April 13, 2017.

(2) The employer expected claimant to lock the cash drawer in her teller station whenever she physically left the station. Claimant understood the employer's expectations.

(3) On March 3, 2017, claimant forgot to lock the cash drawers at her station before she left on break. Claimant's manager discovered the unlocked drawer while claimant was away on break. Upon claimant's return, the manager told her she needed to make sure that she locked the cash drawer each time she was away from her station. The employer issued an incident report to claimant as a result of the March 3 incident. The incident report advised claimant she could be discharged if she left her cash drawer unlocked again when she was away from her teller station.

(4) On April 10, 2017, when claimant was away from her teller station on break, the manager inspected all the on duty tellers' cash drawers, including claimant's, on a "surprise" basis. Transcript at 18. Claimant had again forgotten to lock her cash drawer and the manager discovered that it was unlocked.

(5) On April 13, 2017, the employer discharged claimant for having left her cash drawer unlocked when she was absent from her teller station on April 10, 2017.

**CONCLUSIONS AND REASONS:** 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. 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. The employer carries the burden to show claimant's misconduct by preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer did not dispute claimant's explanation that she was not aware that her cash drawer was unlocked when she left her teller station to take a break on April 10, 2017 and it was "purely an accident" that she failed to lock the drawer. Transcript at 31, 36. Inadvertent acts or failures to act, lapses in attention, forgetfulness, oversights, accidents and the like do not demonstrate a conscious awareness of failing to act in accordance with the employer's standards. Absent evidence that claimant had the consciously aware mental state required to establish that her failure to lock the cash drawer before leaving on break on April 10, 2017 was willful or wantonly negligent behavior, the employer did not meet its burden to show claimant's behavior constituted misconduct. Because the employer did not present such evidence and there is insufficient evidence in this record to infer claimant's consciousness of conduct, claimant is not disqualified from benefits.

The employer discharged claimant but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 17-UI-86696 is affirmed.

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

**DATE of Service:** August 14, 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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