

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1036**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for a disqualifying act (decision # 82305). Claimant filed a timely request for hearing. On August 9, 2017, ALJ Murdock conducted a hearing, and on August 11, 2017 issued Hearing Decision 17-UI-90250, concluding that claimant quit work without good cause. On August 29, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Veteran's Administration employed claimant as a medical administration assistant effective February 16, 2010 to December 27, 2016.

(2) Pursuant to a federal regulation, the employer prohibited employees from possessing alcohol on its premises. Claimant understood the prohibition.

(3) On December 23, 2016, claimant possessed an alcoholic beverage at the workplace. Police issued claimant a citation and notified the employer of the matter.

(4) Claimant's supervisor believed it likely that the employer would discharge claimant and told claimant that she could resign instead of being discharged. Claimant thought that was the best course of action for herself and the facility, so, on December 27, 2016, claimant resigned. On December 29, 2016, claimant entered a 30-day alcohol treatment program, and successfully completed it.

(5) The employer was required to conduct an investigation into claimant's conduct before making any decisions about whether or not to discipline her or discharge her for her conduct. At the time claimant quit work, the employer had not yet begun its investigation into claimant's conduct. The employer had not made a decision about whether or not to discharge claimant for possessing an alcoholic beverage in her locker.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” does not include resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. OAR 471-030-0038(5)(b)(F) (August 3, 2011). OAR 471-030-0038(3)(a) 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. Although isolated instances of poor judgment are excused from constituting misconduct, unlawful conduct exceeds mere poor judgment and cannot be excused. OAR 471-030-0038(1)(d).

The employer prohibited employees from possessing alcohol on the premises; claimant understood the prohibition and consciously violated it on December 23, 2016 by bringing alcohol to the workplace. Claimant did not dispute that she engaged in that conduct, nor did she dispute that her conduct was unlawful. By consciously violating the employer's expectations by committing an unlawful act connected with work, claimant more likely than not engaged in misconduct. She quit work because she thought it best for herself and the employer's facility to do so rather than being discharged or potentially discharged for her conduct; she therefore quit work without good cause and must be disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 17-UI-90250 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** September 25, 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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