

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0083

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 111728). The employer filed a timely request for hearing. On December 28, 2017, ALJ Frank conducted a hearing, and on January 4, 2018 issued Hearing Decision 18-UI-100149, affirming the Department's decision. On January 24, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

We considered the employer's written argument and the entire hearing record. The employer argued that claimant's coworker had seen claimant throw things in the past and felt threatened when he heard claimant say to himself, "kill, kill, murder, murder," which claimant identified as song lyrics he was mimicking. Employer's Written Argument. The record, including the coworker's subjective fear of claimant, does not show by a preponderance of the evidence that claimant knew or should have known that expressing those music lyrics to himself would amount to a "threat" that would violate the employer's weapons and workplace violence policy.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 18-UI-100149 is affirmed.

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

DATE of Service: February 21, 2018

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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