

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0397

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 141419). The employer filed a timely request for hearing. On April 2, 2018, ALJ Snyder conducted a hearing, and on April 6, 2018 issued Order No. 18-UI-106884, affirming the Department's decision. On April 16, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

Employer's Written Argument: The ALJ concluded, and EAB agrees, that claimant was discharged for an isolated instance of poor judgment, and not for misconduct. The employer argues in its written argument that claimant's conduct was not "poor judgment," implying that it was too serious to be excused as mere poor judgment. OAR 471-030-0038(1)(d) (August 3, 2011) defines "judgment" as "every conscious decision to take an action . . . in the context of an employment relationship." Claimant's act of reading a chat conversation between her manager and another employee because she saw that she was the topic of the conversation and not because it was the conversation her manager asked her to find was a conscious workplace decision. That act did, therefore, involve "judgment." Moreover, it was "poor judgment" because it was a decision to willfully violate what claimant should have known by common sense was the employer's reasonable privacy standard. However, on this record, it was undisputed that claimant's conduct was isolated and we agree with the ALJ that the record fails to show that claimant's conduct exceeded mere poor judgment. It was not an unlawful act or so serious that it created an irreparable breach of trust in the employment relationship or otherwise made a continued employment relationship impossible.

EAB reviewed the entire hearing record and the employer's written argument. On *de novo* review and pursuant to ORS 657.275(2), Order No. 18-UI-106884 is **adopted**.

DECISION: Order No. 18-UI-106884 is affirmed.

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

DATE of Service: May 17, 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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