

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0634**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 121244). Claimant filed a timely request for hearing. On June 21, 2018, ALJ Seideman conducted a hearing, and on June 22, 2018 issued Order No. 18-UI-111847, reversing the Department's decision. On June 25, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's argument contained information that was not part of the hearing record. The employer failed to show, as required by OAR 471-041-0090(2) (October 29, 2006), that factors or circumstances beyond its reasonable control prevented it from offering the information during the hearing. For that reason, EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Springer Precision employed claimant as a machine operator from sometime in early 2017 until April 29, 2018.

(2) The employer expected claimant to refrain from threatening supervisors. Claimant understood this expectation as a matter of common sense.

(3) Claimant and his supervisor did not get along. Claimant's supervisor behaved in ways that irritated claimant. Claimant also disliked that the supervisor tried to "micromanage" him. Audio at ~19:33. Claimant met several times with the supervisor in an effort to improve their working relationship. The relationship did not get better. Despite their poor working relationship, an altercation had never arisen between claimant and the supervisor.

(4) On a work day around approximately April 15, 2018, the supervisor's behavior again irritated claimant. That day, claimant did not confront the supervisor, but called the employer's owner after his shift ended. Claimant asked the owner if he could be assigned to new duties but the owner refused. The owner then inquired of claimant about how his day at work had been, and claimant expressed that he had

problems with his supervisor again. Claimant then expressed how upset he had been over the supervisor's behavior and commented, "On a bad day, he [the supervisor] might say something wrong [to me] and I might hurt him." Audio ~21:46. Claimant did not by this comment intend to express an intention to harm the supervisor at some future time, but only to "vent" and point out the extent to which the supervisor's behavior had distressed him. Audio at ~15:18, ~21:26.

(5) The owner construed claimant's comment as a threat of violence, and on April 29, 2018, the employer discharged claimant for threatening the supervisor with violence.

**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) (January 11, 2018) 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. The employer carries the burden to prove claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer reasonably prohibited claimant from threatening his supervisor. The issue is whether, more likely than not, the statement claimant made to the owner on about April 15, 2018 constituted a "threat" toward the supervisor as that word is commonly understood. A threat is defined as "an expression of an intention to inflict evil injury or damage." See <https://www.merriam-webster.com/dictionary/threat>; <https://en.oxforddictionaries.com/definition/threat> ("a statement of an intention to inflict pain, injury, damage, or other hostile action on someone"); <https://thelawdictionary.org/threat> ("a declaration of one's purpose or intention to work injury to the person, property or rights of another"). Here, the statement claimant made to the owner did not express that he intended, planned or wanted to harm the supervisor at some future time, but only that some future behavior of the supervisor might be so upsetting and provoking to claimant that he could hypothetically envision being provoked into harming the supervisor. The context in which claimant's statement was made strongly suggests that, rather than intending to inflict harm on the supervisor, claimant was voicing a desire to avoid that outcome. In addition, that claimant made his statement about the supervisor to the owner indicates that, rather than intending to communicate that he aimed to act with the purpose of hurting the supervisor, claimant was merely using a figure of speech to express the strength of his emotional reactions to the supervisor's behavior and the extent to which he disliked the supervisor's behavior. The testimony of the employer's witness as to the words that claimant spoke to the owner did not establish claimant's comment was an expression of his intention, purpose, plan or goal of harming the supervisor at some time in the future. On this record, the employer did not meet its burden to show that claimant threatened the supervisor by the statement he made to the owner on about April 15, 2018 or that claimant violated the employer's standards with willful or wanton negligence.

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

**DECISION:** Order No. 18-UI-111847 is affirmed.

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

**DATE of Service: July 27, 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](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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