

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0652

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 145953). Claimant filed a timely request for hearing. On June 19, 2018, ALJ R. Frank conducted a hearing, and on June 22, 2018 issued Order No. 18-UI-111865, affirming the Department's decision. On June 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

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

In reaching this decision we considered that claimant wholly denied engaging in the behavior the employer alleged, while the employer presented eyewitness testimony that he did engage in the behaviors described in Order No. 18-UI-111865. During the hearing, while the parties were quietly waiting for the employer's witness to call into the conference line, claimant abruptly stated, "Fuckin' . . . oops, sorry." Audio recording at ~ 34:24. The ALJ then asked, "Sorry, [claimant], did you just swear, sir?" Audio recording at ~ 34:31. Claimant replied, "No" and explained that someone was outside his vehicle and he was trying to roll his windows up. Audio recording at ~34:35. Claimant did not acknowledge or admit having used foul language despite the ALJ's question, and let his denial that he used foul language stand.

The fact that claimant used the word "fuckin'" during the hearing is not material or even notable for purposes of this decision. However, the fact that he lied about having used it despite the fact that he used it, and was recorded using it, and demonstrated that he knew he used the word by stating "oops, sorry," is relevant and material information about claimant's credibility as a witness. Given that claimant was not truthful about his conduct during the hearing, the record cannot show that he was, more likely than not, truthful when he denied having engaged in the behavior the employer alleged. Claimant's testimony was lacking in credibility, and therefore where his version of events differed from the events described by the employer, we found facts in accordance with the employer's evidence.

DECISION: Order No. 18-UI-111865 is affirmed.

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

DATE of Service: August 1, 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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