

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0750

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144914). Claimant filed a timely request for hearing. On July 23, 2018, ALJ Scott conducted a hearing, and on July 26, 2018 issued Order No. 18-UI-113825, concluding the employer discharged claimant, but not for misconduct. On July 31, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: In Order No. 18-UI-113825, the ALJ stated that claimant did not object to the admission of Exhibit 1, video footage of the final incident resulting in claimant's discharge, into the hearing record.¹ However, the record shows that the ALJ overruled admitted Exhibit 1 over claimant's objection² Exhibit 1 is relevant and material to the issue of whether claimant engaged in the conduct for which he was discharged, and shall remain in the hearing record. Because the record does not show that the employer sent claimant a copy of the video, EAB shall provide claimant with a copy of it. EAB considered the entire hearing record, including Exhibits 1 through 3, when reaching this decision.

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

DECISION: Order No. 18-UI-113825 is affirmed.

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

¹ Order No. 18-UI-113825 at 3.

² *Id.* at 1, 3.

DATE of Service: August 30, 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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