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## **ATTITUDE**

The employer is entitled to a pleasant, cooperative, positive workplace. While most employees and employers have good and bad days, an employee who continually causes disruption in the workplace or causes a degeneration in the general morale and atmosphere may be disqualified for willful misconduct. This includes employees who spread gossip and rumors which upset employees and morale, those who constantly complain but do not follow proper grievance procedures, and those employees who generally are uncooperative toward the employer or other employees. More serious altercations and harassment are covered in other sections of this manual.

## ATTITUDE

### *Agitation of Other Employees*

#### *Case Law:*

*Liggins v. OESC, Bd of Rev, City of Tulsa et al., CJ-87-05057 (Tulsa Co. D. Ct. 8-3-87)*

**Facts:** Claimant spread rumors about her coworkers. The coworkers were offended and morale suffered. When counseled, claimant indicated she would not change her behavior since she believed the rumors were true. She was discharged.

**Held:** Claimant's behavior was improper and in substantial disregard of the employer's interests.

**Result:** Benefits denied.

*McCall v. Bama Pie Co., Bd of Rev., OESC, CJ-87-00407 (Tulsa Co D.Ct. 3-10-87)  
85 AT 1316;85 BR 474*

**Facts:** Claimant was warned several times about gossiping and causing unrest among the employees. She was a lead lady and her action did not show support of company policy.

**Held:** Misconduct shown.

**Result:** Benefits denied.

*Case Applications:*

95 AT 5843 BR

Facts: Claimant made remarks about the use of guns in the workplace, in a private conversation. However, his comments were loud enough so that coworkers could and did overhear him.

Held: Claimant, a former police officer, should have been aware of the increase of random shootings at workplaces by employees and should have known that his statement could cause panic and fear among those who heard his conversation. As a counselor for individuals who are lawbreakers, claimant is held to a higher standard than employees in other types of work. Misconduct shown.

Result: Benefits denied.

89 AT 5947 BR

Facts: Claimant was fired for allegedly spreading rumors about his coworkers and other's use or distribution of drugs. Claimant denies spreading rumors and said he had not been allowed to present his version of the story.

Held: Claimant's testimony was uncontroverted because there was no evidence of wrongdoing. No misconduct shown.

Result: Benefits allowed.

79 AT 61551 79 BR 1259

Facts: While training employees, claimant counseled them regarding religious beliefs. The relentless badgering caused four employees to quit in two and one-half months. Fellow employees complained. Claimant was counseled and advised he would be fired if he continued. Claimant advised that he could not comply with the employer's request because of his religious beliefs.

Held: Claimant's religious beliefs hampered efficient operation of the business and upset fellow employees. Misconduct shown.

Result: Benefits denied.

Cross-reference:

## ATTITUDE

### *Complaint or Discontent*

96 AT 4713 BR

Facts: Claimant was supposed to receive subsistence pay while working out of town. He called to straighten out the fact that he was short two days pay. Claimant was told to stay at the job site and the problem would be fixed. He said if the problem was not fixed, he wouldn't be back. Claimant did not receive his check, so he returned home the next day and was fired. The employer had sent the check by Federal Express, but it was sent to the foreman who had quit, so the claimant never got his check.

Held: It is the employer's responsibility to pay claimant's subsistence pay in a timely manner. Claimant was not correctly paid so he returned home to get it straightened out. Both claimant's superintendent and foreman had left employment and there was no one in charge at the job site to assist the claimant. There is no showing of misconduct.

Result: Benefits allowed.

96 AT 7544 R-BR

Facts: The employer alleges that claimant was discharged because he violated policy when purchasing a vehicle, leaving work for long periods of time and having a bad attitude. Claimant made arrangements to purchase a car with the manager on duty, not the general manager, which did not violate policy. Claimant began taking hour lunches after having the time taken from each day the previous month even though he did not get a lunch break. Claimant told his supervisor that he gets one hour for lunch and was fired.

Held: No evidence of misconduct.

Result: Benefits allowed.

Cross-reference:

ATTITUDE

*Uncooperative Attitude*

90 AT 7515 BR

Facts: Claimant was told she was being discharged for poor work habits and attitude. No other explanation was given. Claimant denies any problems and was given no warnings about her conduct.

Held: Claimant's testimony was unrefuted. There was no evidence of misconduct.

Result: Benefits allowed.

81 BR 1228

Facts: A candy machine was burglarized at claimant's place of work. Several employees, including claimant, were to be questioned. Claimant refused to cooperate with the investigator even after he was offered legal counsel. He was given a certain amount of time to contact the investigator. When he did not, he was discharged.

Held: Guilt is not an issue. Claimant failed to cooperate in an investigation. Failure to abide by a reasonable request of the employer is misconduct.

Result: Benefits denied.

Cross-reference:

## **COMPETING WITH EMPLOYER**

Setting up a personal business or soliciting business in direct competition with the business of the employer is willful misconduct. This includes taking steps to set up a competing business without informing the employer, whether or not it is done on company time. It also includes using the employer's computers, contacts, client lists, equipment, time or resources to obtain clients for a competing business, including access to employer computer files from home computers with the intent of setting up a competing business. It makes no difference whether the competing business is ever actually realized. This applies without regard to the existence of a contract between the employer and employee, which contains a non-competition clause.

## COMPETITION WITH EMPLOYER

97 AT 0478 BR

Facts: Claimant was discharged because of poor sales and job performance, and because he was operating a personal business after hours that competed with his employer. This violated the employment agreement which claimant had signed. Claimant was also using his employer's calling card for personal telephone calls and using the truck and gasoline for personal business. There were discrepancies in the mileage reports and gas receipts. Claimant admitted to tree spraying after hours and weekends.

Held: Claimant violated the non-competition agreement. Misconduct shown.

Result: Benefits denied.

82 BR 90

Facts: Claimant was discharged when his employer saw an ad in the yellow pages for claimant's business that was in direct competition with the employer. Claimant admitted to placing the ad, but said it was placed earlier and he decided not to start the business. Claimant never told the employer of his original plans.

Held: Going into business in competition with one's employer and not revealing those plans is misconduct.

Result: Benefits denied.

81 BR 1842

Facts: Claimant failed to perform his duties and solicited Amway sales on company time. He violated the credit policy resulting in an unauthorized sale. Claimant was behind in his paperwork and talked with the employer's customers about buying Amway detergent.

Held: Soliciting customers away from the employer is misconduct.

Result: Benefits denied.

Cross-reference:

## **DISHONESTY**

An employer is entitled to employees who are honest and trustworthy in their dealings with the employer and its clients and customers. Any employee who knowingly enters false information on an application for employment is guilty of willful misconduct, unless the question asked is illegal. In addition, employees who falsify work records, time sheets and travel claims, whether or not they will receive additional remuneration as a result, are guilty of misconduct. Fraud committed by the employee which is connected to the work is a disqualifying act, as is theft or the unauthorized use of employer property. Employees may not “borrow” employer property without the employer’s permission. The claim that “everyone else does it” is no excuse. This includes pilfering of supplies as well as outright major theft or embezzlement. An employee who is found to have lied to the employer in other instances than work records and applications may also be disqualified for willful misconduct.

## DISHONESTY

### *False Information on Work Application*

#### *Case Law:*

*Arnold v. Bd. of Rev, St John Medical Ctr et al., CJ-89-6481 (Tulsa Co. D. Ct., 9-12-90)*

**Facts:** Claimant was discharged for giving a false response on her application for employment regarding whether she had been convicted of a felony. She had received a deferred sentence for a charge of obtaining controlled drugs by fraud. Claimant had been instructed by her attorney to answer it “no” because the claimant had pleaded guilty and the sentence would be expunged.

**Held:** The District Court reversed the Board of Review stating that a guilty plea was not the same as a conviction and a deferred sentence was not a conviction.

**Result:** Benefits allowed.

*Gore v. State of Oklahoma et al., CJ-88-753 (Okla. Co. D. Ct. 11-7-89)*

**Facts:** Claimant’s supervisor requested a background check on the claimant based on an anonymous call. Claimant had four arrests, two for DUI and two for public intoxication in Oklahoma and two in Texas for theft and possession of an illegal substance. Claimant stated on his application that he had no felony arrests or misdemeanor arrests in the last ten years. Claimant was told to resign or be fired.

**Held:** Claimant concealed his record. Misconduct found.

**Result:** Benefits denied.

*Case applications*

*90 AT 7738 UCFE*

Facts: Claimant lied on his employment application about being arrested and convicted. He also lied about being fired from a previous job. He was discharged for making false statements on the application.

Held: Making false statements on an employment application equals misconduct.

Result: Benefits denied.

*80 BR 1387*

Facts: Claimant said her traffic record was clean when she had six violations. The employer's insurance would not cover her and she was discharged.

Held: The employer was unable to get liability insurance on the claimant, a prerequisite for the job. Failing to disclose a poor driving record constitutes misconduct.

Result: Benefits denied.

Cross-reference: See also *Lying to Employer*, 96 AT 8173 BR; *Fraud, McMinn v. Dolese et al.*, CJ-86-13548 (*Ok. Co. D. Ct. 5-13-87*)/

## DISHONESTY

### *Falsification of Work Records*

#### *Case Law*

*Horton v. OESC, Bd. of Rev. of OESC, William E. Davis and Sons, Inc., No. 61,957(Okla. Sup. Ct. 1-22-86) Not for Publication*

Facts: Claimant was employed as a warehouseman. His production during his employment was consistently under the employer's required standards. Over nine months he received three verbal warnings and one written warning. He was discharged at the end of nine months. Claimant padded reports to make it appear that he was meeting the production standards. He was offered extra training but turned it down.

Held: Falsification of records is misconduct.

Result: Benefits denied.

#### *Case Applications*

*99 AT 02344 BR*

Facts: Claimant was a senior material management analyst. She was absent due to illness from November 30, 1998, to December 8, 1998. Claimant received a doctor's statement excusing her from work beginning November 30, 1998, with a return to work date of December 7, 1998. Claimant timely called her employer and advised that she was still ill on December 7, 1998. The doctor's statement did not include the date of December 7<sup>th</sup>. Claimant corrected the document and gave it to her employer. The employer called the doctor's office, which first confirmed the date, then denied it. The employer accused the claimant of falsifying a medical document and conducted an investigation. Claimant was discharged for falsifying the return to work date on a medical document. Claimant had no prior history of disciplinary action.

Held: This was one incident of carelessness in an otherwise discipline-free twenty-year history with the employer. No misconduct found by the Board of Review which reversed the Appeal Tribunal.

Result: Benefits allowed.

*96 AT 6826 BR*

Facts: Claimant was discharged for falsifying test information at his place of employment. The employer received reports that claimant was not performing the tests but recording the results. The supervisor went to claimant's work area and noted that the claimant was not present at the time the tests were recorded.

Held: Misconduct found.

Result: Benefits denied.

*96 AT 6236 BR*

Facts: Claimant was paying herself unauthorized overtime. The employer did not discover this until he took the checkbook home to figure out why there was not enough money to pay his own salary.

Held: It is not credible to believe that an employer would pay overtime to claimant equaling one-third of her salary. Intentional disregard of the employer's best interest is misconduct.

Result: Benefits denied.

*95 AT 1731 BR*

Facts: Claimant directed a subordinate to clock out for her when she left early. Claimant testified that it was the practice of other employees. The employer testified that they were unaware of the procedure and considered it falsification of time cards and grounds for termination.

Held: By using the time clock, employees should know that they are expected to report their time accurately. Falsification of time records is misconduct.

Result: Benefits denied.

*93 AT 000437 BR*

Facts: Claimant was discharged for misstating his hours on his time card, then later signing it as correct. Claimant says that he did not notice the error.

Held: The evidence fails to prove intent. The act was a mistake, not deliberate. Misconduct not shown.

Result: Benefits allowed.

## DISHONESTY

### *Fraud*

#### *Case Law*

*Walden v. St. Anthony Hospital et al., CJ-8704006 (Okla. Co. D. Ct. 5-15-1989)*

Facts: Claimant was discharged for filing an insurance claim on a “D&C” when the actual operation was an abortion, which was not covered by insurance. The employer contends that the claimant knew the policy and misrepresented her claim.

Held: The claimant’s act was against the employer’s best interest. Misconduct shown by the willful misrepresentation to the employer’s insurer.

Result: Benefits denied.

*McMinn v. Dolese et al., CJ-86-13548 (Okla. Co. D. Ct. 5-13-87)*

Facts: Claimant was discharged for falsification of work records. He improperly completed a stressing sheet, indicating the steel put into concrete beams had been properly stressed. He said when he completed the first stressing sheet, he felt he misread the gauge or wrote down the wrong number. He redid the sheet putting down the correct numbers. This was only done at the suggestion of an inspector.

Held: Claimant’s acts were against the best interest of the employer. Willful misconduct shown.

Result: Benefits denied.

*Myers v. OESC et al., SC-87-97(Seminole Co. D. Ct. 6-16-87)*

Facts: Claimant was terminated after she let relatives of two individuals sign marriage certificates.

Held: Claimant should have known that forged signatures were unacceptable. Claimant was guilty of misconduct.

Result: Benefits denied.

## Case Applications

### *97 AT 1059 BR*

**Facts:** The employer had a promotion where cards were given to customers and employees and punched each time a purchase was made. When the total equaled \$250, a place was scratched off and money awarded. Claimant discovered that darker cards were worth more. Instead of telling management, claimant shared her discovery with other employees.

**Held:** By not advising the employer the claimant deliberately violated the employer's expected standard of behavior. Misconduct shown.

**Result:** Benefits denied.

### *87 AT 2166 BR*

**Facts:** The employer received allegations that claimant had falsified official college records. She changed her personal grades in four courses and falsified ACT scores on her college record. She utilized the false grades to gain a "certificate of mastery". Claimant admitted her computer access code allowed her to make some of the changes alleged, but said other employees made the changes in her record and gave false statements to implicate her.

**Held:** The claimant used unsubstantiated grades to apply for a certificate of mastery. Even if the trier of fact accepted the claimant's denial of wrongdoing in regards to the false entries, the ultimate question would still remain; why did the claimant use this information to apply for and be conferred a Certificate of Mastery? It is logical to assume the claimant would have known whether or not she had successfully completed those courses. The records of the employer indicated the claimant had been unsuccessful in some of the classes used to apply for and be conferred the Certificate. Misconduct shown.

**Result:** Benefits denied.

*87 AT 884 BR*

Facts: Claimant says his manager, who admitted to misappropriating substantial sums, instructed him to take a \$1500 check to the bank, cash it and bring the cash back, which he did. The claimant was discharged and not given a chance to defend himself. No criminal charges were filed against him.

Held: The only proof of intent to defraud was claimant's signature on the check. There was no showing of willful misconduct.

Result: Benefits allowed.

*86 AT 14629 BR*

Facts: Claimant was terminated for failure to follow the employer's specific instruction regarding the obtaining of cash with the use of a credit card and for abusing the privilege of using manufacturer's coupons to purchase goods in the store. Claimant assisted a co-worker in abuse of coupon privileges and obtained cash through the use of her credit card.

Held: Both actions caused her employer economic loss. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also Falsification of Work Records, 96 AT 6236 BR

## DISHONESTY

### *Incorrect or Improper Travel Claims*

#### *Case Applications*

#### *90 AT 7801 BR*

**Facts:** Claimant was a teacher required to attend conferences provided by the Vo-Tech system twice a year. He received a stipend from the Vo-Tech for attending the conferences. After the first conference the superintendent told the claimant to keep receipts for all expenses and the school would reimburse him. The superintendent told him the situation was approved by the school administration. A new superintendent found out about the Vo-Tech paying a stipend. After investigating he told the claimant it was wrong to file a claim with the school and if claimant did not resign he would turn the matter over to the District Attorney. Claimant paid the money back, but was still required to resign.

**Held:** Since all teachers received the same stipend regardless of whether they lived in the city where the conference was held or had to travel and stay in a motel, it was logical for the claimant to think he would be reimbursed.

**Result:** Benefits allowed.

## DISHONESTY

### *Lying to Employer*

#### *Case Applications*

##### *96 AT 8173 BR*

Facts: The employer, a home health service business, by state law, cannot hire felons or people having committed misdemeanors involving larceny. Claimant was questioned and she said she had a misdemeanor. When the OSBI report was received, it showed claimant pleaded guilty to a felony. The employer discharged the claimant.

Held: Claimant lied about the felony. Misconduct shown.

Result: Benefits denied.

##### *89 AT 07826 R*

Facts: The claimant left an out of state job site to return home for what he told his supervisor was a personal family matter. He did not ask for permission to leave; he just left. The employer's witness testified that claimant told him two days before he left that he had a job interview in Oklahoma and was going regardless of the consequences. The employer fired the claimant for lying.

Held: The claimant's action in lying to employer was misconduct.

Result: Benefits denied.

See Also: Falsification of Application

## DISHONESTY

### *Theft*

#### *Case Law*

*Vogle v. OESC, 817 P2d 268 (Okla. App 1991)*

Facts: Claimant mistakenly took home a tester of perfume without performing the first step in the approval process, getting approval from the store manager. The claimant always obtained approval in the past. This was the only time she omitted a step. She returned the tester when she found out there was a problem.

Held: An isolated infraction is not misconduct.

Result: Benefits allowed.

#### *Case Applications*

*97 AT 4444 BR*

Facts: Claimant was discharged for petty theft of office supplies. Claimant was clearly counseled and warned by the employer to not take anything.

Held: It was a deliberate violation of the employer's wishes. Misconduct shown.

Result: Benefits denied.

*90 AT 8706 BR*

Facts: The employer had problem with food disappearing from the kitchen. Employees were allowed to consume leftovers in the kitchen, nowhere else. Claimant was fired for violating this rule. The employer did not see it happen, but was informed by their secretary. Claimant says she was given two pieces of chicken, which she did not feel like eating, so she gave them to her boyfriend who was at the back door of the kitchen.

Held: Claimant did not try to hide the food. There is no evidence of stealing. Misconduct was not shown.

Result: Benefits allowed.

90 AT 4562 R BR

Facts: Claimant was discharged after an audit showed the company was \$7,748 short on damage. After watching the dealing between claimant and a route driver, the employer decided they had been falsifying reports. The route driver was caught and said claimant was involved. Claimant's job was to assist the route driver in counting merchandise. It did claimant no good to misrepresent the amount of products since he gained nothing from it.

Held: There is no proof that claimant was cheating the company or was involved with the driver. No misconduct was proven.

Result: Benefits allowed.

90 AT 8624 BR

Facts: Claimant refunded a customer's money when the customer waited 45 minutes to receive his order. Service was guaranteed in thirty minutes. Claimant observed her manager refunding money when this occurred. Claimant did an over ring and had the customer sign the ticket. Employees are told in training they must satisfy the customer. Claimant was fired for alleged theft or mishandling of funds.

Held: Misconduct was not shown.

Result: Benefits allowed.

90 AT 8579 BR

Facts: The employer had a policy that employees pay for food before eating it. There was also a policy that management count waste products prior to discarding them. The claimant was observed picking up a bag of sandwiches and placing them in the waste area before it had been counted. He was later observed off work with a bag of sandwiches outside the back door. The incident was reported to the district manager. Before the district manager could talk to the claimant, the claimant was discharged for eating food before paying for it. He acknowledged eating a sandwich, but denied taking the bag of sandwiches. Claimant was discharged for stealing food.

Held: Theft is misconduct.

Result: Benefits denied.

DISHONESTY

*Unauthorized Use of Property*

*Case Applications*

*93 AT 6166 BR*

Facts: Claimant was discharged after consulting her employer's checkbook to find some information for a co-employee. The information was not privileged and the checkbook was not off limits to claimant. When the employer found out about the incident he became angry and fired her. Later the employer offered the claimant her job back and she declined.

Held: There is no evidence of misconduct.

Result: Benefits allowed.

*90 AT 7523 BR*

Facts: Claimant operated a company vehicle to deliver parts. She worked eight months. Shortly before her shift was to end, claimant received information that her fiancé threatened to commit suicide. Claimant sent word to the dispatcher and rushed home. Claimant told the dispatcher she would have the vehicle back by the end of her shift. The employer discharged her and told her the vehicle would be picked up by someone else.

Held: Claimant was discharged for unauthorized use of a company vehicle. This was an isolated incident due to an emergency, but not willful or deliberate.

Result: Benefits allowed.

*90 AT 7576 BR*

Facts: The employer received word that claimant was being investigated by the OSBI over equipment being used outside employer's place of business without authorization. Charges were filed by the District Attorney. Claimant said he called the administrator after he was released on bail and offered to resign, but felt the resignation was under duress. The charges were later dropped.

Held: Since the claimant had no choice but to resign, he is considered to have been fired. There was no conviction. The employer failed to show misconduct.

Result: Benefits allowed.

## **DISPUTES BETWEEN EMPLOYEES**

This section covers minor disputes between employees which may result from personality differences, jealousy, problems outside work, or minor incidents at work. An employee may not be disqualified just for having a dispute with or not getting along with other employees, unless it can be proven by a preponderance of the evidence that the employee is somehow at fault in the dispute or is acting upon the dispute in a negative or disruptive manner. An employee who spreads rumors about others in the workplace is being willfully disruptive and will be disqualified. An employee who continues to act on a dispute after being warned against such behavior by the employer is guilty of misconduct. Just not getting along with other employees is not willful misconduct. The allegation that other employees do not wish to work with said employee is not enough to establish willful misconduct. It should be noted that employees in supervisory positions may be held to a higher standard when their behavior is unprofessional and not in the best interest of the employer.

See also Attitude

## DISPUTES BETWEEN EMPLOYEES

### *Case Applications*

#### *90 AT 7058 BR*

Facts: Claimant was a grill cook. She attempted to complain to her supervisor regarding the performance of an employee taking orders. Claimant was unable to fill orders properly and asked her associate to pass the orders to her clearly. The associate became upset and began calling claimant a vulgar name. Claimant never said anything vulgar back. She had two witnesses. Claimant called her supervisor who determined both were at fault and fired them both.

Held: The employer did not provide proper supervision over his employees. Claimant tried to prevent the situation from happening. No willful misconduct found.

Result: Benefits allowed.

#### *89 AT 5947 BR*

Facts: Claimant was fired for allegedly spreading rumors about his coworkers and other's use or distribution of drugs. Claimant denies spreading rumors and said he had not been allowed to present his version of the story.

Held: Claimant's testimony was uncontroverted because there was no evidence of wrongdoing. No misconduct shown.

Result: Benefits allowed.

#### *88 AT 12706 BR*

Facts: Claimant was in a management position and was fired when he threw a pie at a coworker. In the sixty days before his discharge his attitude changed drastically. There was excessive tardiness and other incidents that caused the employer concern. Claimant claimed he threw the pie after being struck first.

Held: An employer has the right to expect employees working in management or upper level positions to conduct themselves in a professional manner. Misconduct found.

Result: Benefits denied.

*81 AT 9015*

Facts: Claimant was involved in a pushing match at work in which she was the aggressor. Both parties to the fight were terminated.

Held: Although claimant may have been provoked by the actions of a coworker, she acted in an imprudent manner by being the aggressor. Fighting on the job constitutes misconduct.

Result: Benefits denied.

*80 BR 427; 80 AT 0858*

Facts: Claimant was having personal problems with a coworker. The employer advised that the problems should be fixed on their own time, because the conduct was disrupting the office. A final confrontation caused the manager to warn them again. The claimant continued to argue. After being asked again to stop, the claimant was discharged.

Held: Disruptive conduct over non-work issues constitutes misconduct.

Result: Benefits denied.

Cross-reference: See also *Agitation of Other Employees, Liggins v. OESC, Bd of Rev, City of Tulsa, et al., CJ-87-05057 (Tulsa Co. D. Ct. 8-13-87)*

## **DISRUPTIVE BEHAVIOR**

This section covers not only disputes that may develop into something more serious, but also other employee behavior which adversely affects the employer's interest or lowers the morale and tranquility of the workplace. It includes negative behavior such as fits of anger or temper tantrums, threatening physical or verbal behavior, racial or ethnic slurs, harassment of any kind, abusive or foul language (even if "others use it"), threats or actual physical altercation or assault or threats, disparaging remarks regarding the employer to others, and rude or abusive behavior toward others. It also includes knowing of and not reporting incidents which are detrimental to the employer. It does not necessarily excuse the employee that these acts are not committed in front of customers.

## DISRUPTIVE BEHAVIOR

### *Abusive Behavior*

#### *Case Applications*

#### *95 AT 10231 BR*

**Facts:** Claimant had been harassed for several years by the same coworkers and had reported it to his supervisor. The coworkers' direct supervisor or "group leader" was involved in the harassment. Although the claimant did not tell his supervisor about every incident, the supervisor was aware of most of them. The week of the claimant's termination, he asked the "group leader" to talk to his employees about the continued vandalism of claimant's truck. Leader stated he was not involved, but did not stop the vandalism. In the last incident, garbage was dumped in the claimant's pickup and a tampon placed under his windshield wiper. When confronted, the coworkers laughed, whereupon the claimant lost his temper and either slapped or pushed the coworker, who fell and was slightly injured. Claimant's was the only first-person testimony offered about the incident. The employer did not call the other person involved.

**Held:** The coworker's actions went far beyond what claimant should be expected to ignore. They had even sent love letters to claimant's address with perfume and panties enclosed, which was very upsetting to the claimant's wife as well. Claimant's response was reasonable and foreseeable under the circumstances. The employer should have taken steps to contain the harassment before claimant was pushed to the breaking point. The harassment was even being conducted by a person in authority. The employer must take some of the responsibility for claimant's reaction to the continued harassment. Claimant's actions were not willful. No misconduct shown.

**Result:** Benefits allowed.

#### *95 AT 9623 BR*

**Facts:** Claimant was counseled several times and had been suspended on two occasions for a continuing pattern of disruptive and threatening behavior. The abuse continued.

**Held:** The claimant violated the employer's standard of expected behavior. Misconduct shown.

**Result:** Benefits allowed.

*95 AT 4116 BR*

Facts: Claimant was counseled several times about her attitude toward patients and her fellow employees. She was warned she would be fired if her attitude did not improve. In two final incidents, claimant raised her hand as if she was going to strike a patient and she spoke harshly to a staff person.

Held: Claimant was insubordinate to her supervisor. The action of raising her hand to a patient was unconscionable and constituted misconduct.

Result: Benefits denied.

*87 AT 5339 BR*

Facts: The claimant was involved in an altercation with her supervisor in which she used racial slurs.

Held: Claimant's actions and language were misconduct.

Result: Benefits denied.

Cross-reference: See also Uncooperative Attitude, *90 AT 7618 BR*

## DISRUPTIVE BEHAVIOR

### *Abusive and Foul Language*

#### *Case Law*

*Limke v. Bd. of Rev., et al, C-88-96 (Canadian Co. D. Ct. 11-14-88)*

**Facts:** Claimant was a truck driver. He failed to make a scheduled delivery. He was instructed by his immediate supervisor to take the freight back to the yard. Later in the day he was told by the general manager to deliver the freight. Claimant became upset and used profane language. He was discharged.

**Held:** The Commission, Appeal Tribunal and Board of Review all denied benefits. The District Court reversed, finding that although as a matter of law, the use of inappropriate language was misconduct, this was an isolated incident and did not amount to misconduct.

**Result:** Benefits allowed.

*Drakes. v. Morrison, Inc. et al., CJ-86-7876 (Tulsa Co. D. Ct. )*

**Facts:** Claimant was fired because he would not follow directions and did not complete his duties within the specified time. He refused to perform assignments and made racial remarks and used vulgar language with the manager when counseled.

**Held:** Claimant exhibited a hostile and insubordinate attitude which created an intolerable situation.

**Result:** Benefits denied.

## Case Applications

### *96 AT 2210 BR*

Facts: Claimant became upset when her truck was moved without her permission. Her truck was blocking another car and she could not be found, so her truck was moved without her. Claimant cursed the dispatcher, and threatened to “blow away” the next person that touched her truck. The incident was reported to the dispatcher’s supervisor, who reported to the main office. Claimant was discharged.

Held: Threats of violence measure to misconduct.

Result: Benefits denied.

### *96 AT 7766 UCFE BR*

Facts: Claimant was preparing his lunch when an employee from another area of the building approached him and began using Vietnamese obscenities. Claimant felt he was in danger so he pushed the aggressor into the hallway. The other employee then began yelling for help.

Held: Claimant was not the aggressor; he was defending himself. His actions are not considered misconduct.

Result: Benefits allowed.

### *96 AT 00703 BR*

Facts: Claimant used abusive language to a female coworker. He was reprimanded previously for using the same language and advised that if it happened again he would be fired. It happened again and claimant was discharged.

Held: Deliberate violation of the employer’s expected standard of behavior was misconduct.

Result: Benefits denied.

*93 AT 03416 BR*

Facts: Claimant was on 24-hour call and needed the telephone number of an employee. He was told to call a security guard. The security guard refused to give the number. Claimant became agitated and used bad language.

Held: Claimant showed bad judgment, but it was not sufficient to show a willful disregard of the employer's interests.

Result: Benefits allowed.

Cross-reference: See also Failure to Report to Work Without Notice, *95 AT 5896 BR*

## DISRUPTIVE BEHAVIOR

### *Altercation or Assault*

#### *Case Law*

*Arrow Trucking Co. v. OESC et al, CJ-89-0672 (Tulsa Co. D. Ct. 1-5-90)*

**Facts:** Claimant worked for the employer almost fourteen years. On his last day of work another employee was injured. Claimant took the employee to the employer who took him to the hospital. Claimant then spoke with an officer of the company. Claimant does not remember his actions toward the officer, but he remembers being yelled at by the officer and later finding out he struck the officer. Claimant was sorry about the incident and it was the only incident that was harmful to his employment in fourteen years.

**Held:** The Commission denied benefits, but was reversed on appeal. Both the Appeal Tribunal and the Board of Review allowed benefits. The Appeal Tribunal held that to be misconduct an action must be willful. Claimant was under extreme stress and his actions were beyond his control. The District court reversed.

**Result:** Benefits denied.

#### *Case Applications*

*90 AT 4610 BR*

**Facts:** Company policy calls for an employee involved in a fight on company time or at work to be terminated. The claimant engaged in an altercation with a coworker. Several witnesses state that claimant was an active participant.

**Held:** The claimant violated company policy. Misconduct shown.

**Result:** Benefits denied.

*90 AT 9135 BR*

Facts: Claimant was involved in two altercations with coworkers. In the second incident, the coworker threatened the claimant with a hammer. The claimant pulled a knife before the two were separated. Both were suspended and later discharged.

Held: Fighting on the job is obvious misconduct. Claimant's action placed himself and others in danger.

Result: Benefits denied.

*90 AT 3679 BR*

Facts: Claimant was reprimanded by a supervisor for refusing to perform a normal part of her job duties. An argument ensued and both had to be restrained. Claimant was discharged for insubordination and refusing to perform her assigned duties. Claimant denied having refused to carry out her duties or engaging in an altercation. She asserted that she was threatened by her supervisor.

Held: The employer did not establish that claimant's action constituted misconduct. Only hearsay evidence was available from the employer. No proof of misconduct.

Result: Benefits allowed.

Cross-reference: See also Disputes Between Employees, *90 AT 7058 BR*

## DISRUPTIVE BEHAVIOR

### *Disloyalty to Employer*

#### *Case Applications*

##### *84 BR 1541*

Facts: Claimant was discharged for casting disparaging remarks about the president of the bank while talking to another associate. The employer did not appear to testify in person, nor did he send any witnesses.

Held: Mere allegations of acts of misconduct without evidence are not sufficient to sustain the burden of proof. No misconduct proven.

Result: Benefits allowed.

##### *79 BR 1271*

Facts: Claimant worked as a bellboy. He was terminated for theft, prostitution and the results of a polygraph test. He denied involvement in any theft or prostitution, but admitted he was aware of the involved parties. He felt it was not his place to inform the employer.

Held: Claimant had direct knowledge of individuals involved in conduct detrimental to the employer. His failing to inform the employer makes him a party to the action. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also *Competing with Employer, 97 AT 0478 BR*

## DISRUPTIVE BEHAVIOR

### *Rudeness and Abuse Toward Customers*

#### *Case Applications*

##### *95 AT 3084 R BR*

Facts: Claimant was discharged for allegedly mistreating a patient. A report done by the Department of Health and Human Services indicates that the patient was mistreated.

Held: Misconduct shown.

Result: Benefits denied.

##### *90 AT 268 BR*

Facts: Claimant drove a cement truck. While delivering some cement, he engaged in a verbal conflict with the customer. The customer reported the conflict to the employer. Claimant was discharged. Claimant denied any rude behavior. Neither the employer nor his witness had first hand knowledge of the event.

Held: The employer only provided hearsay testimony. The employer's discharge of the claimant for business reasons may have been valid, but there is no proof of misconduct.

Result: Benefits allowed.

##### *90 AT 7498 BR*

Facts: The claimant was discharged for several allegations that he was rude to customers. The complaints resulted in discipline and two suspensions. The incident that precipitated the discharge was a customer complaint that claimant rudely dropped her change. Claimant recalled the incident but stated he was unaware that the customer considered him rude until he was advised by the manager.

Held: Mere allegations of rudeness are not proof. The claimant's denial of rude behavior is not refuted by firsthand testimony. Willful misconduct was not proven.

Result: Benefits allowed.

*91 AT 15 BR*

Facts: Claimant's overall work performance and attitude were considered to be poor. He was issued frequent verbal warnings that his deliveries were too slow and were resulting in too many call backs from customers. The final day of employment the claimant was overheard by the manager using profane language in front of coworkers and near customers. The manager criticized the claimant, who smiled and walked off. Claimant was fired. Claimant did not appear at the Appeal Tribunal hearing, so the employer's testimony was unrefuted.

Held: The use of profanity in the workplace in front of customers measures to misconduct.

Result: Benefits denied.

*88 AT 12386 BR*

Facts: Claimant was discharged for a confrontation with a customer. As claimant was leaving work, he observed a man and two women drinking from mugs belonging to the restaurant. Claimant advised the people that they could not drink outside because the restaurant could lose its liquor license. The women handed over the mugs, but as the claimant was going into the restaurant the man hit the claimant in the jaw, then drove away. The co-manager saw the incident. Claimant had never been counseled about any customer complaints. Claimant called the police and reported the incident. The co-manager reported the incident to the district manager. Claimant was fired.

Held: There is no evidence that claimant goaded the customer into hitting him. Claimant was doing his best to protect the employer's interests. No misconduct.

Result: Benefits allowed.

Cross-reference: See also, Abusive Behavior, *95 AT 4116 BR*

## **FORCED RESIGNATION**

Many employers will offer to allow an employee to resign rather than face discharge. They may feel that this frees the employer from having to prove acts of misconduct and allows the employee to save face. In some cases it is also implied that the employee will receive a favorable recommendation from the employer, and the employer will not contest unemployment benefits if the employee agrees to resign. Any separation which is initiated by the employer is a discharge, sometimes referred to as a constructive discharge for purposes of the Act. It is implied in most of these cases that if the employee does not agree to resign they will be discharged. The fact that the employee agreed to sign a resignation does not change the character of the separation. It will still be treated as a discharge and the employer must still prove willful misconduct by a preponderance for the employee to be disqualified.

Cross-reference: Constructive Quit

## FORCED RESIGNATION

### *Case Applications*

#### *96 AT 2846 BR*

Facts: The claimant and employer signed a one-year contract. Claimant advised the employer that she would not be signing a contract the following year. Seven months later claimant was told that the employer had hired a replacement and her last day would be the following month. Claimant was discharged before her contract was completed.

Held: The discharge was not for misconduct.

Result: Benefits allowed.

#### *90 AT 9324 BR*

Facts: Claimant was a long time employee who had entered a drug treatment center, but was unable to complete it because of problems with her daughter. She was told not to miss any more work. During her absence she was recommended for termination and a hearing was scheduled. The employer told the claimant she should resign. Claimant resigned saying that she was moving out of state.

Held: The employer solicited the resignation, so it was a constructive discharge. There is no evidence to establish misconduct connected to the work.

Result: Benefits allowed.

#### *90 AT 9207 UCFE BR*

Facts: The claimant was unable to pass a test required to keep his job. He was advised that he would be dismissed and he resigned to avoid discharge.

Held: When an individual resigns to avoid being discharged, the separation is a constructive discharge. There is no evidence of willful misconduct.

Result: Benefits allowed.

90 AT 7215 BR

Facts: Claimant was employed as executive director, but her primary job duties were secretarial in nature. The employer decided to revise the job description for her position to include more responsibility. He told her she could apply for the position, but she declined and submitted her resignation.

Held: Claimant was constructively discharged when she was informed that applicants for her position were being sought. The change in her job duties constitutes good cause for her resignation. No misconduct.

Result: Benefits allowed.

Cross-reference: See also Unauthorized Use of Property, *90 AT 7576 BR*; Incorrect or Improper Travel Claims, *90 AT 7801 BR*

## **GARNISHMENT**

Regardless of company rules to the contrary, garnishment of an employee's paycheck is not willful misconduct connected to the work. Garnishment is a legal proceeding to collect a debt owed and is sanctioned and sometimes ordered by the courts. It results from conduct or circumstances occurring outside the workplace; therefore, it does not comply with the "connected to the work" requirement. It may, in some cases, be excessive and it may, in some cases, be prohibited by company rules. The fact that the employer has a rule against it does not govern the implementation of the Act. However, in some extreme instances, where the employer has counseled the employee regarding excessive garnishments which create an undue burden upon the employer, willful misconduct may be found.

## GARNISHMENT

### *Case Applications*

#### *90 AT 7826 BR*

Facts: Claimant had his payroll check garnished in the past. He was told by the employer that if anymore of those problems occurred, he would be fired. The employer received another garnishment. He called the claimant in and suggested the claimant take off work for a while to correct the problem. He was told he could come back when he was ready. Claimant left and when he tried to return to work later he was told someone else was hired in his place.

Held: Claimant was on a leave of absence suggested by the employer. When he tried to return he found he had been replaced. Claimant was discharged, but not for misconduct.

Result: Benefits allowed.

#### *87 AT 14695 BR*

Facts: The employer received six garnishments from May 27 to August 4. Claimant was discharged because the problem was a nuisance for the employer. No formal disciplinary warnings had been issued. Claimant stated he had contacted the creditors with little success.

Held: The Appeal Tribunal and Board of Review held that excessive garnishments measured to misconduct. The District Court remanded to the Board of Review for a hearing. The Board on rehearing determined that the employer had a responsibility to make the claimant aware of its rules concerning garnishment. The Board found that the claimant was not sufficiently made aware of the endangerment to his employment for receiving garnishments.

Result: Benefits allowed.

*1943 AT 75; 455 BR 75*

Facts: Claimant's salary was garnished three times for the same debt resulting in his termination according to plant rules which stated that garnishment would result in immediate discharge. Federal Wage Garnishment Law prohibits discharge of a person so long as the garnishments stem from one debt. Claimant said he was unfamiliar with the plant policy regarding garnishment.

Held: Garnishment three times was not misconduct, but claimant's failure to take reasonable action to stop the garnishments is misconduct.

Result: Benefits denied.

## HEALTH STANDARDS

This section covers contagious disease. As stated before in this manual, illness itself is not misconduct. However, there may be certain situations where, due to the nature of the contagious disease acquired by the employee, the employee cannot be allowed to work due to the type of work and risk of infection to others, such as health care, hospital, or due to risk of loss of license or closure by state inspectors. To be considered is whether a period of recovery is feasible or allowed. An employer may be allowed to take appropriate steps to protect others in its employ. If the employee fails or refuses to comply with reasonable rules enacted by the employer to protect other employees and clients, then willful misconduct may be found.

## HEALTH STANDARDS

### *Contagious Diseases*

#### *Case Law*

*Stewart v. St. Francis Hospital, et al., CJ-87-02322 (Tulsa Co. D. Ct. 7-87)*

**Facts:** Claimant worked in a hospital and was diagnosed as suffering from a respiratory tract infection. She was told to go home because hospital policy said she could not work around hospital patients. She failed to clock out and waited one hour before leaving. She waited to receive a call from her physician prescribing medication.

**Held:** Claimant knew company policy and her failure to leave immediately violated that policy. Misconduct shown.

**Result:** Benefits denied.

#### *Case Applications*

## HEALTH STANDARDS

### *Physical Examination Requirements*

*See the ADA (Disability Act) for guidelines and compliance standards in employment situations.*

### *Case Law*

*Arkle v. Independent School Dist. No. One of Tulsa Co., 784 P2d 91, 1989 Ok. Civ. App. 78, No. 70,048 (Okla. Civ App. 11-21-89)*

**Facts:** Claimant was required to have a physical exam and drug screening before returning to work as a school bus driver. An appointment was made, but claimant was unable to go in because he planned to visit his sick mother out of town. He arranged with his own physician to have the test. He found out he had hepatitis. Claimant was hospitalized and the doctor notified the associate superintendent that claimant would be hospitalized for thirty days. While in the hospital claimant drug tested negative. His health was otherwise good. The day that claimant entered the hospital he was recommended for termination. At his hearing copies of his tests were presented but the discharge was upheld.

**Held:** The Appeal Tribunal and Board of Review reversed the Commission and denied benefits. The District Court reversed and allowed benefits. On appeal to the Court of Appeals, the Court held that there was no proof of willful disregard of employer's interests. Although the test results were not sent in to the employer, the claimant's illness and mother's illness were factors to be considered. No misconduct found.

**Result:** Benefits allowed.

## **ILLEGAL OR IMMORAL ACTS**

Unlawful acts committed in the course of business or in the execution of an employee's duties are willful misconduct and grounds for disqualification. Those who are in a special position of fiduciary or professional responsibility are held to a higher standard, and it is not excusable to claim that the acts were committed on the order of a supervisor. Illegal acts are detrimental to the employer and are willful misconduct.

Immoral acts committed in the workplace are undoubtedly detrimental to the employer's interest and are willful misconduct. Immoral acts committed outside the workplace may also be detrimental to the employer and may be found to be willful misconduct. Some factors to be considered are the extreme nature of the acts, the job duties conducted by the employee, the clients of the business, and the nature of the business and the resulting perception of the business by the public, as in positions of public trust or high visibility.

## ILLEGAL ACTS

### *Case Law*

*Mohaney v. OESC et al., No 65,405 (Okla. Ct. of App. 4-22-87)*

**Facts:** Claimant was Vice President of a bank and worked for the bank for 21 years. A discrepancy of \$174,000 was found in the bank books. The amount was traced back to the 1970's to overdrafts withdrawn from the banking system as dead items. Claimant was involved in the procedure, but was following orders. After the discrepancy was found, claimant was fired for his participation.

**Held:** Claimant was guilty of misconduct as defined by *Tynes* and *Uniroyal*. The case was distinguished from the *Haynie* case because in that case the claimant was merely an employee. In this case, the claimant was management and should have known better.

**Result:** Benefits denied.

*Haynie v. OESC et al., No. 65,406 (Okla. Ct. of App. 4-7-87)*

**Facts:** Claimant was employed by a bank for 21 years. There was a discrepancy of \$174,000 in the bank's books and she was advised to take a leave of absence until the audit and investigation could be finished. The evidence reflected the discrepancy came about as a result of overdrafts over a period of years. The President and Vice President of the bank knew of the bookkeeping procedure and it was authorized by them.

**Held:** An employee's actions cannot constitute misconduct if the actions complained of were authorized or condoned by the employer. No misconduct shown.

**Result:** Benefits allowed.

*87 AT 11762 BR*

Facts: Claimant was employed as a plant manager and controller. He was fired when it was discovered that over an eight month period he signed checks payable to the president of the company totaling \$530,000. The checks were issued on the president's verbal order. Claimant said that the president was his boss and he did what he was told.

Held: As a CPA claimant has financial responsibility to insure the financial well-being of the employer. Failing to do so is a willful disregard of the employer's interest. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also Theft, *87 AT 7350 BR*

## IMMORAL ACTS

### *Case Law*

*Roberts v. Sinclair Oil Corp. et al., CJ-88-7094 (Ok. Co. D. Ct. 9-22-89)*

Facts: A customer alleged that claimant approached three teenage girls and offered them money to pose in short nighties, bikinis, etc. The mothers of the girls alerted the police when they found out about the offer.

Held: Claimant engaged in solicitation of minors on company time. These actions were not in the best interest of the employer. Misconduct shown.

Result: Benefits denied.

### *Case Applications*

*89 AT 6983 BR*

Facts: Claimant failed to report three occurrences of sexual acts performed in front of herself, her supervisor and another employee by a male employee from another company.

Held: An individual participating in immoral acts on duty is guilty of misconduct.

Result: Benefits denied.

*81 BR 211*

Facts: Claimant was a police scout car patrolman. He was fired after an investigation verified that he 1) had permitted an unauthorized passenger in his vehicle; 2) was out of his assigned area; and, 3) was involved in immoral, indecent and obscene behavior with two female civilians.

Held: Engaging in immoral acts while on duty is misconduct.

Result: Benefits denied.

## **INCARCERATION AND/OR CONVICTION**

As stated in the section on Arrest and Incarceration, absence caused by incarceration may be considered to be willful misconduct, if the absence is extended (more than 2-3 days). Although most employers require the employee to call, actual notice by a spouse or relative is sufficient for purposes of the Act. However, newspaper accounts are not sufficient notice. Failure to report to work as a result of incarceration is willful misconduct if it is the result of the employee's own willful acts. A no contest plea resulting in a conviction is still a conviction and does not mitigate the misconduct. A conviction which results in absence from work is willful misconduct per se.

## INCARCERATION AND/OR CONVICTION

### *Case Law*

*Warehouse Market, Inc., v. Bd. of Rev. of OESC, OESC and Bobby Patterson, No. 77,910 (Okla. Civ App, Div. 2, 8-4-92)*

**Facts:** The claimant was discharged after missing work for two days because he was in jail for driving without a license. The employer said that claimant knowingly drove without a license.

**Held:** For this to be misconduct the off duty action must directly affect the employer. The employee's incarceration and failure to secure bond does not amount to misconduct.

**Result:** Benefits allowed.

*Pratt v. OESC, No. 63620 (Okla. Ct. of App. 2-11-86)*

**Facts:** Claimant was incarcerated and required to serve a misdemeanor jail sentence. The offense was unrelated to his employment. He notified the employer ten days prior to his incarceration that he would be off the job and told the employer he would need to be replaced. He was discharged for misconduct.

**Held:** Incarceration upon a valid conviction constitutes an unjustified absence from work, especially when it is unexcused by the employer.

**Result:** Benefits denied.

*Dept. of Human Services v. Veach, et al, CJ 91-598 (Garfield Co. D. Ct. 1-29-92)*

**Facts:** Claimant pleaded no contest to a felony charge and was discharged from his employment as a recreation therapist.

**Held:** The Appeal Tribunal reversed the Commission and allowed benefits finding no evidence that the discharge was work related as the claimant stated the felony took place at his home while off duty. The Board of Review affirmed. The District Court held that claimant worked in a school for mentally retarded and disabled children. Claimant's plea of no contest to the felony charge of lewd molestation of a minor child was work related and was misconduct.

**Result:** Benefits denied.

*Frazier v. Hardwall Fabricators, Inc. and OESC, C-85-539 (Ottawa Co. D. Ct.)*

Facts: Claimant was incarcerated for 63 days and not allowed to use the phone to call his employer. The charge was not employment related and was dismissed. He was freed after the preliminary hearing.

Held: Claimant could have relayed a message through mail or through his attorney. His failure to contact his employer was misconduct.

Result: Benefits denied.

## Case Applications

### *98 AT 1040 BR*

Facts: Claimant was arrested and incarcerated for possession of marijuana. Claimant was told that the employer might not be able to hold his job, but to call once he was out of jail. When claimant was released, he was advised that he would not be rehired. Claimant was absent from work for two weeks due to the incarceration.

Held: Absence over three days due to incarceration is misconduct.

Result: Benefits denied.

### *80 BR 171*

Facts: Claimant was a resident of the state corrections work release center. He signed out as if going to work even though the plant was closed that day. His action was a violation of the minimum security rules. He was deemed a security risk and returned to prison. He was unable to tell the employer and was fired for failure to report in a three-day period.

Held: Claimant's unemployment was attributable to his negligence in violating the work release center rules and failure to report to work constitutes misconduct.

Result: Benefits denied.

### *80 AT 7254; 80 BR 1537*

Facts: Claimant was placed in jail by his wife and missed three days of work. His mother called in for him and when he was released he called the employer. He was told he had been replaced.

Held: Claimant was making an effort to keep his job by keeping the employer informed. No misconduct found.

Result: Benefits allowed.

## **INEFFICIENCY OR INABILITY TO PERFORM DUTIES**

The Commission has consistently held that mere inefficiency or inability to do one's job is not willful misconduct within the meaning of the Act. The key is whether the employee has the knowledge and training sufficient to complete the tasks assigned correctly and has exhibited the ability to do so in the past. The fact that an employee is within a trial or probationary period with the employer does not disqualify the employee from benefits. While it may be in the best interest of the employer not to retain that employee, there is no showing of willful misconduct. When an employee has demonstrated the ability to do the job and fails to correctly do it in spite of warnings from the employer, willful disregard of the employer's interest is shown and benefits will be disallowed. Poor judgments made in good faith are not misconduct. An isolated mistake even by someone who has demonstrated the ability to do the job, is not misconduct. Key elements are whether the incident is isolated or consistent, whether the employee has been made aware of the deficiencies, and whether the employee has been given the opportunity to correct the deficiencies.

See Section 3-106.

## INEFFICIENCY/INABILITY TO PERFORM DUTIES

### *Case Law*

*Square One-Suburban, Ltd. v. Duncan & OESC, CJ-87-5301 (Okla. Co. D. Ct. 1-3-90)*

**Facts:** Claimant was hired as the activities director. She was discharged for not providing enough activities for the residents. She failed to plan activities and to implement the planned activities. She was counseled several times. Although the claimant's primary responsibility was to provide activities for the residents, she was also required to help with the patients during breakfast and lunch, and to provide fingernail and toenail care for the patients. She was unable to manage her time in such a way as to be able to conduct activities for the residents. She asked for help from the employer, but was given only suggestions for activities, not help with restructuring her time.

**Held:** The employer did not establish misconduct.

**Result:** Benefits allowed.

*Clark v. Wal-Mart Stores et al., No. 71,669 (Okla. Ct. of App. 5-29-90; Not for Publication)*

**Facts:** Claimant worked for a large department store. She was reprimanded eight times during her last year. The alleged misconduct included ordering deleted merchandise, improper scanning and failure to enter proper bar codes on price tickets, failure to set out sale merchandise, poor department maintenance, improper merchandise shelving and threatening to slap a co-worker. These incidents resulted in bookkeeping problems, customer complaints and affected the inventory.

**Held:** The Appeal Tribunal and Board of Review denied benefits. The District Court reversed. The Court of Appeals held that violations don't have to be deliberate or with evil intent; but can also include willful disregard of the standard of behavior which an employer has the right to expect or a carelessness of such degree as to measure to misconduct. Claimant failed to heed numerous warnings and to observe company policy and procedure. Reversed.

**Result:** Benefits denied.

*Case Applications*

*96 AT 0275 BR*

Facts: Claimant failed to fulfill the duties required of her position. She claimed she had too much to do and some things were overlooked.

Held: Claimant's carelessness and negligence were of such a degree that they showed substantial disregard of her duties and obligation to her employer. If there was too much work she should have asked for help. Misconduct shown.

Result: Benefits denied.

*96 AT 5462 BR*

Facts: Claimant was the director of patient care and was discharged for improperly scheduling and charting patient visits. Claimant was counseled and given two weeks to change her ways. The problem was still there and there were severe charting deficiencies in the files. The claimant was discharged.

Held: Because of the possibility that improper patient care could be life-threatening and because the claimant was a nurse and should have been aware of the importance of correct charting and scheduling, misconduct was established.

Result: Benefits denied.

*96 AT 7803 BR*

Facts: Claimant was a custodian and was discharged for failing to properly perform her duties. Claimant was counseled several times. She was transferred to a different school, but her work did not improve.

Held: Failure to complete basic daily tasks is considered carelessness and negligence of such a degree as to establish misconduct.

Result: Benefits denied.

90 AT 8846 BR

Facts: Claimant was discharged for making numerous mistakes, the most harmful of which was failing to document all customer contacts and taking inadequate phone messages. The employer insurance agency was concerned about liability. Claimant had been repeatedly counseled. Claimant admitted the problems occurred when she was in a hurry, but she was making an effort.

Held: The Board of Review reversed the Appeal Tribunal's finding of misconduct. There was no evidence of willful or intentional acts designed to harm the employer. To discharge the claimant may have been a good business decision, but it was not for willful misconduct.

Result: Benefits allowed.

90 AT 8294 BR

Facts: Claimant worked as a temporary employee for six weeks and did satisfactory work. She was hired as a permanent employee and was satisfactory. Her performance deteriorated, resulting in complaints from customers and co-workers. Claimant received two warnings, after which a brief improvement was seen. She was discharged when it declined again.

Held: When an employee fails to perform to the employer's satisfaction and has previously shown the ability to perform and warnings have been given, it is misconduct.

Result: Benefits denied.

90 AT 7306 BR

Facts: When claimant was hired, she was told she would be expected to produce 100 trays per day. After three months, she was only up to 65 trays per day. She was counseled and one month later she was given a warning that failure to improve would result in her termination. Her speed increased but the quality deteriorated. She was again counseled and she slightly improved. Then her work deteriorated again and she was discharged.

Held: Claimant's failure to succeed was the result of her inability, not willful misconduct. She had not shown the ability to do the job as expected by the employer.

Result: Benefits allowed.

*90 AT 1284 BR*

Facts: Claimant worked as a personnel manager for a temporary employment company and was an excellent employee. A major part of her job was telemarketing surveys. She preferred her own method over the employer's which took longer. Claimant was discharged for failure to make the assigned number of contacts. Claimant was not warned.

Held: The Appeal Tribunal denied benefits because claimant deliberately chose not to follow the employer's procedures. The Board of Review reversed because claimant was never counseled or told her job was in jeopardy.

Result: Benefits allowed.

Cross-reference: See also Errors in Handling Money, *95 AT 9711 BR*.

## **INSUBORDINATION**

Insubordination by an employee toward an employer is willful misconduct. It may take several forms, including outright refusal to obey an order or instruction of a supervisor, a dispute with a superior, refusal to perform assigned work duties, refusal to work the time assigned or to change work hours, refusal to transfer, or a ridicule of authority. The operative criterion is whether the order or request is reasonable. Reasonableness may be judged by both the average reasonable person standard and by the contract of hire between the parties. Refusal need not be the obvious verbal rejection of an order or assignment. Refusal may also be inferred by the action or inaction of the employee. A distinction should be made between refusal to perform a duty and an error in omission by mistake. Reasonableness should also be determined in the light of all the circumstances of each case. It is not insubordination if an employee refuses an unlawful or immoral order. If the circumstances indicate that the employee refused the request because of conditions or unacceptable circumstances of which the employer was made aware, then the refusal may not be insubordination.

## INSUBORDINATION

### *Disobeying Order/Instruction of Supervisor*

#### *Case Law*

*Stagner v. Bd. of Rev. of OESC, 792 P.2d 94 (Okla. App. 1990)*

Facts: Claimant refused to use the time clock that was installed by the employer. Claimant was fired seven months later for never using the clock.

Held: Claimant's actions were a willful refusal to follow the employer's reasonable work rules. Misconduct shown.

Result: Benefits denied.

*Courtney v. August Apartments et al., CJ-88-5889 (Okla. Co. D. Ct. 9-22-89)*

Facts: Claimant was discharged from her position as assistant manager at an apartment complex. Claimant was on call, but called the employer's residence and informed him she was going to the circus and would call the answering service every thirty minutes. Permission was denied because the company would incur extra charges from the answering service. The claimant called the answering service and was told there would be no extra charges. Claimant called the employer back to tell him and was discharged. Claimant testified that it had previously been acceptable to use the answering service this way. The employer states that claimant had been told that when on call, she must remain by the phone.

Held: It was the employer's prerogative to direct his work force as he sees fit. The employee may not abridge that right. Claimant was clearly informed that night that she did not have permission. Her continued insistence was misconduct.

Result: Benefits denied.

## Case Applications

### *99 AT 7134 BR*

**Facts:** Claimant was discharged after she failed to follow specific instructions given by her supervisor. She had been given one prior warning for refusing to follow instructions and being hateful to her co-workers. Claimant says she did not understand the supervisor's instructions. At the hearing the hearing officer asked the claimant what the instructions were and how they should have been carried out. Claimant was able to explain.

**Held:** The ability to explain indicated that claimant willfully disregarded the supervisor's instruction. Misconduct shown.

**Result:** Benefits denied.

### *98 AT 7742 BR*

**Facts:** Claimant was terminated for refusal to go to a workers compensation physician after reporting an injury to his eye, which he thought may have been caused by getting salt dust in his eye while loading bags for a customer. He had noticed a spot in his eye and thought it possible the salt dust caused the spot so he asked to be allowed to file an incident report. He already had a doctor's appointment that day with his own physician, but wanted the report on file in case that was the cause of the problem. When he went to the personnel office, the employee who regularly handled the reports was not there. The assistant manager tried to find the right paperwork. When the personnel employee returned she saw that the assistant manager had a workers comp form, so she gave additional forms for the claimant to complete. The claimant told her that he did not want to complete the form, since he was not sure the eye problem was related to the incident and told her he was going to his own doctor. She gave them to him anyway, but he never filled them out. After claimant left to go to his doctor, the manager contacted the regional human resources manager who told him that claimant was required to go to the company physician to have a drug test after reporting an on-the-job injury. He told the manager to instruct the claimant that refusal to take the drug test would subject him to immediate termination. Claimant returned to work after seeing his physician when he learned it was not a work-related problem. When he returned to work he was told that he needed to see the worker's compensation doctor, but claimant refused because he had already been to his own physician and the problem was not work related. He was fired.

**Held:** Refusal to go to the employer's doctor for a non-work-related health problem cannot be considered misconduct.

**Result:** Benefits allowed.

*90 AT 7605 BR*

Facts: Claimant worked as a laborer for five months. The foreman could not get claimant to follow instructions. He lacked the desire to work and seemed preoccupied. Claimant was repeatedly counseled for standing around smoking. On the last day claimant was told three times to stop smoking and get to work, but claimant ignored the foreman. Claimant was discharged.

Held: The employer is entitled to a days work for a day's wage. Claimant ignored the foreman, which was a direct refusal to comply with reasonable orders. Misconduct shown.

Result: Benefits denied.

*90 AT 5836 R BR*

Facts: Claimant was employed by a domestic crisis center. Claimant was discharged for refusing to divulge the content of an obscene phone call she received. The call was made by the director's boyfriend. Other employees received the calls and divulged the contents. Claimant could not bring herself to repeat it. The police were not called; the director was fired.

Held: Claimant refused to obey an order, but the employer was aware of the content from questioning the other employees. Claimant's refusal was ill-considered but not misconduct.

Result: Benefits allowed.

Cross-reference: See also Excessive Contacts on Job, 96 At 3137 BR; Neglect of Duties/Errors in Performing Duties, 96 AT 1028 BR

## INSUBORDINATION

### *Dispute With Superior*

#### *Case Law*

*Day v. Oklahoma Osteopathic Hospital et al., CJ-86-06386 (Tulsa Co. D. Ct. 3-18-87)*

Facts: Claimant had been counseled for poor work performance and attitude toward co-workers. Claimant had signed three disciplinary reports in one month. She was placed on ninety days probation. Claimant was requested to take an x-ray of a patient and she refused, saying she didn't have the film. The supervisor gave claimant the film. Claimant asked the supervisor why the supervisor could not do it herself. This occurred in front of other employees.

Held: Claimant's failure to follow instructions of the supervisor in disregard of prior warnings is misconduct.

Result: Benefits denied.

#### *Case Applications*

*96 AT 5952 BR*

Facts: Claimant was singled out for harassment by her supervisor, albeit it was disguised as practical jokes. Claimant reported the harassment and the reason for it to management, who did nothing. The supervisor's immediate decision to suspend or fire the claimant was an overreaction.

Held: Claimant's actions do not measure to misconduct.

Result: Benefits allowed.

*95 AT 9388 BR*

Facts: Claimant was discharged by her employer when she objected to the employer cursing at her in front of a customer when she asked him a question to help the customer. Claimant had objected to such profanity in the past.

Held: Claimant has the right to be treated with respect. No misconduct shown.

Result: Benefits allowed.

*95 AT 7478 BR*

Facts: On April 28, claimant was relieved of his duties as sewer plant superintendent, but he continued to work for the employer. A report was to be mailed to the Federal EPA on May 10. A final test needed to be completed and was to be performed on May 3. Claimant said he was not instructed to complete the report; the responsibility belonged to the new superintendent. On May 9, the claimant was called into the City Manager's office and told to complete the report. Claimant said that he could not. The City Manager advised the claimant to do the report or write a letter to the EPA explaining his failure to provide the report. Claimant said he would not take the responsibility. Claimant was fired.

Held: It was the new superintendent's responsibility to complete the report. No misconduct shown.

Result: Benefits allowed.

*90 AT 8259 BR*

Facts: Claimant returned to work after a one-week absence to find the work piled up. She wanted to work overtime, but the manager did not schedule her to work the upcoming holiday. When she complained, she was told to "shut up". She wrote to the manager's supervisor in accordance with the open door policy to complain. The supervisor called a meeting with all parties. The employer said that claimant was belligerent. Claimant admits raising her voice when untrue accusations were made. Claimant was discharged.

Held: There was insufficient evidence to find willful misconduct.

Result: Benefits allowed.

*90 AT 7564 BR*

Facts: Claimant worked as a caregiver. The supervisor had problems with the claimant because she ignored the rules. Claimant received numerous warnings for failure to cooperate. When the supervisor posted the rules, claimant removed them - twice. When confronted by phone, she challenged the change in rules and patients' medications. She said she was tired of posted rules.

Held: Claimant was insubordinate She repeatedly questioned the authority of the supervisor, argued and disregarded the rules. Misconduct shown.

Result: Benefits denied.

*90 AT 7416 BR*

Facts: During a production meeting, the claimant complained about the other employees' work habits. The supervisor responded that the meeting was not the appropriate place to discuss the matter. Claimant became angry and said he would go to the plant manager. The supervisor instructed the claimant to come to his office to discuss the incident. Claimant twice refused. He was sent home. Claimant asserts that policy allows him to go to the plant manager and that the supervisor had refused to talk about his concerns.

Held: The supervisor did not refuse to address claimant's concerns, but pointed out that a public meeting was not the place. Claimant did not show a substantial reason to refuse the order to report to the supervisor's office. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Perform Work Duties as Assigned*

*97 AT 8327 BR*

Facts: Claimant was asked to take on another job in addition to her current assignment. Claimant said that she could not and would have to resign. The employer said that the claimant would not be held responsible for the extra work. About two and one-half weeks later, claimant was asked by the employer about the work pertaining to the new job. When claimant said she did not have to do it she was fired.

Held: The work was not claimant's responsibility. No misconduct shown.

Result: Benefits allowed.

*97 AT 6033 BR*

Facts: Claimant was asked to alternate with another supervisor and provide on site supervision to a demolition crew of non-violent inmates. The assignment would last 6-10 weeks. Claimant was chosen because of his background in building construction. Claimant refused the assignment. He was advised he would be fired if he did not take the job. He still refused and was fired. Claimant refused the job because his grandmother had been murdered thirty years earlier by an inmate of the prison which provided these non-violent inmate workers.

Held: Claimant's reason for refusing to accept the assignment given to him by his supervisor was personal in nature. The murder of his grandmother happened approximately 34 years prior. Claimant was not being asked to supervise her murderer, nor any other inmate convicted of a violent crime. He was only asked to supervise a crew of non-violent inmates for three hours each day on a job that would last approximately six to ten weeks. Claimant's refusal to accept this assignment was insubordination and showed a substantial disregard of the employer's interest. Misconduct shown.

Result: Benefits denied.

*90 AT 7873 BR*

Facts: Claimant's work required traveling, but no more than one week per month. When the company hired a new manager, he discontinued claimant's work and told her they needed her to be out of town 2-3 weeks per month. Claimant said she could not be gone that much and was discharged.

Held: Claimant was fired for saying she could not travel three weeks per month; which was a substantial change in her job duties. No willful misconduct found.

Result: Benefits allowed.

*90 AT 7310 BR*

Facts: The employer received complaints from customers regarding claimant's alleged rudeness. Claimant was told any further rudeness would result in her discharge. Two weeks later the employer brought her grandchildren to the store to work. The younger child did not work and sassed the claimant, telling her he did not have to mind her. Claimant told the employer not to leave the children for her to baby sit again. The claimant was discharged.

Held: Claimant was imposed upon to handle the employer's grandchildren and baby sit. Claimant's request was justified. There was no willful misconduct.

Result: Benefits allowed.

*90 AT 3 BR*

Facts: Claimant was assigned to work in the furnace area, since there was no work to be done in his area. Claimant reported to the service area, but left after a short time because he felt ill. He reported to his supervisor and informed her that he had hypertension and could not work in the heat of the furnace area. The supervisor denied being told the reason for his refusal to work in the furnace area. Prior to going home, the claimant and the supervisor both went to the personnel office. The supervisor told the personnel office that the claimant had quit, which the claimant denied stating he could not work there because of his health problem. The employer had received no medical evidence to preclude claimant working anywhere. The personnel office recorded claimant as discharged for refusal to complete a work assignment.

Held: No effort was made by the employer to determine the validity of the health of the claimant. No misconduct proven.

Result: Benefits allowed.

## INSUBORDINATION

### *Refusal to Work Time Assigned*

#### *Case Applications*

##### *82 BR 1048*

Facts: Claimant's employer required occasional overtime from the employees. Claimant refused to work overtime in several instances.

Held: Claimant was advised of the overtime requirements but refused to comply. Misconduct shown.

Result: Benefits denied.

##### *81 BR 56*

Facts: Claimant worked weekends as a cook. Her son started working in the oilfields and came home only on weekends. Claimant wanted to do his laundry and spend time with him. She refused to work on Sundays. She was discharged.

Held: Claimant's refusal to work on Sundays was a direct violation of her hiring agreement and was misconduct.

Result: Benefits denied.

##### *82 BR 364*

Facts: Claimant was a bookkeeper who worked 40 hours per week. She was paid time and a half for overtime. Two months before her discharge, her supervisor requested that she work no more than 35 hours per week. This caused a backlog in her work and temporary help was hired to assist her. On her last day, claimant was again asked to work no more than 35 hours and she refused, stating she would work the hours necessary to stay current. She was fired.

Held: It is the employer's prerogative to schedule employees in the manner he feels will best serve his business needs. Claimant was insubordinate since she refused to work the hours assigned. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Change Work Hours*

#### *Case Applications*

##### *90 AT 7156 BR*

Facts: Claimant was instructed by the manager to work seven days per week, twelve hours a day. This was a change in the hire agreement and claimant refused. She was discharged.

Held: The supervisor's demand was unreasonable. No misconduct shown.

Result: Benefits allowed.

##### *90 AT 5491 BR*

Facts: Claimant worked six and one-half years from 9 to 5, Monday through Friday. She seldom worked Saturdays which had been agreed by her employer. When claimant told the employer she was pregnant, he asked her to quit. When she did not, he transferred her to cashier, which required her to work on Saturday. Claimant told him she could not work on Saturday. She was scheduled to work Saturday anyway and did not report for work. She was discharged.

Held: Claimant was justified by the situation. The employer's actions were vindictive and violated the contract of hire. No misconduct.

Result: Benefits allowed.

##### *90 AT 3503 BR*

Facts: Claimant worked for the employer for three and one-half years. When a new manager was placed in charge, claimant was told she would have to work some night shifts. Claimant advised the manager that her husband was out of town and he did not like her to work at night by herself. The manager agreed to schedule her around the night shift. Three days later at 6 p.m. the claimant learned she was scheduled to work from 11 p.m. to 7 a.m. that day. She called the manager to tell her she could not work that night. Claimant was fired.

Held: This was an isolated incident. Claimant had made the manager aware of her situation. No willful misconduct.

Result: Benefits allowed.

INSUBORDINATION

*Refusal to Transfer*

*Case Applications*

## INSUBORDINATION

### *Ridicule of Authority*

#### *Case Applications*

*81 BR 271*

Facts: Claimant was a custodial worker. The employer had difficulty with the claimant opposing a change in anything that differed from the past. On the last day, the employer was interviewing a prospective employee when claimant entered and asked where a desk was to be moved. The employer stated that he had changed his mind and told claimant where to put the desk. Claimant yelled for the desk to be put down as the employer had “changed his mind again”. Claimant shook his finger at the employer and said a cafeteria door was broken and needed to be replaced that day. The employer asked the claimant to resign. Claimant stated that he would have to be fired. Claimant left and then turned in his keys. Claimant showed up for work the next day, although the employer thought the claimant had quit. Claimant said he was too upset to work the previous day. The employer told the claimant to find another job.

Held: The claimant’s acts were insubordinate and willful. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Sign Reprimand*

#### *Case Applications*

##### *94 AT 9630 BR*

**Facts:** Claimant was hired as a delivery driver. One day he was asked to bus a table. Before bussing the table the claimant noticed a delivery was ready so he delivered it. Upon returning the claimant was issued a counseling form for neglecting to clear the table. Claimant indicated he did not want to sign the form. He was fired for failing to sign the form.

**Held:** Employees have the right to refuse to sign a counseling form that they, in good faith, believe to be incorrect. Counseling forms are nothing more than written opinions, and as such are subject to various interpretations. This conduct, in and of itself, does not constitute misconduct. The employer did not prove misconduct as a reason for claimant's discharge.

**Result:** Benefits allowed.

##### *91 AT 2571 BR*

**Facts:** Claimant was employed for three years and was discharged for refusing to sign a warning notice. Claimant refused to sign because he felt it was incorrect and if he signed it would be an acknowledgment of wrongdoing., the notice states that signing only indicated that certain items had been discussed. It does not state that failure to sign will result in discharge.

**Held:** This was an isolated incident and was not misconduct as defined in *Vester*.

**Result:** Benefits allowed.

**Cross-reference:** See also *Ryan v. Harps Food Stores*, 90 AT 05720 BR (7-30-90); *J.D. Johnson v. Tom Hock Interior Designs, Inc.*, 90 AT 8890 BR (10-31-90).