

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1060**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73153). Claimant filed a timely request for hearing. On October 15, 2018, ALJ Snyder conducted a hearing, and on October 19, 2018, issued Order No. 18-UI-118424, affirming the Department's decision. On November 5, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Perfect Look Hair Fashions employed claimant as a hair stylist from 2013 to July 19, 2018.

(2) The employer expected its employees to be professional at all times and refrain from "bad mouthing" the employer in a manner that seriously damaged its interests or reputation. Exhibit 1. Claimant was aware of and understood the employer's expectation.

(3) On November 22, 2016 and May 14, 2018, claimant received written warnings for exhibiting unprofessional conduct at work when speaking badly about customers in connection with their race and in speaking with coworkers. Claimant acknowledged receiving the warnings in writing and was warned that future incidents of similar conduct could result in discipline up to and including termination of employment. Exhibit 1.

(4) On or about July 18, 2018 claimant was working on a female customer's hair. While doing so, she observed an older male outside and called him a "dirty gypsy." Audio Record ~ 14:45 to 16:00. She went on to say to the customer, "I don't like those people. When they come in, we turn them down. They just want things for free...I don't even want them in the store." *Id.* The man outside of the salon was the uncle of the person whose hair she was working on and talking to and the customer recorded some of claimant's statements with her phone from under the cape she had on while having her hair styled. The customer, who was also a gypsy, came in to the salon the next day and from there contacted an employer representative and played her recording for him. The recording was also heard by another stylist at the

salon at that time. The customer also contacted an attorney who later spoke with the employer representative and complained about claimant's statements and lack of professionalism.

(5) The next day, the employer representative in question confronted claimant about her conduct on July 18, 2018. Claimant responded, "I'm sorry I did that" explaining she did not know that the man outside was the uncle of the customer. Audio Record ~ 14:45 to 16:00. The employer then discharged her for unprofessional conduct.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. The employer discharged claimant for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) (January 11, 2018) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for unprofessional conduct on July 18 in speaking with a customer about a man in racially derogatory terms and going on to state, "I don't like those people. When they come in, we turn them down. They just want things for free...I don't even want them in the store." At hearing, claimant initially disputed that she made the statements or admitting doing so to the employer, but later admitted that she may have made the statements and just not recall making them. Audio Record ~ 29:45 to 30:35. The employer's witness at hearing heard the customer's recording testified that claimant admitted to making the statements when confronted. More likely than not claimant made the statements and later admitted doing so.

Not only were claimant's conducts unprofessional, they potentially disparaged the employer by implying that the employer did not serve "those people" and when they came to the salon, they turned them down for service. Claimant did not dispute that she was aware of the employer's policy regarding maintaining professionalism in the salon. Viewing the record as a whole, claimant's conduct demonstrated indifference to the consequences of her statements for the employer when she was conscious of making them and knew or should have known that her statements would probably violate standards of professional behavior the employer had the right to expect of her. Claimant's conduct was at least wantonly negligent.

Under OAR 471-030-0038(3), isolated instances of poor judgment are not misconduct. However, some acts, even if isolated, that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d). Here, claimant's statements were patently unprofessional and arguably portrayed the employer as a business

that did not serve all individuals equally, or discriminated against individuals based on their race or culture. Moreover, the customer in question had an attorney contact the employer about claimant's statements demonstrating that her conduct placed the employer's business at risk. Viewed objectively, claimant's conduct made a continued employment relationship impossible. Accordingly, it exceeded mere poor judgment and does not fall within the exculpatory provisions of OAR 471-030-0038(3).

Claimant's conduct also was not the result of a good faith error in her understanding of the employer's expectation regarding exhibiting professionalism. Claimant did not dispute that she acknowledged being aware of the employer's policy previously or that she had been warned more than once about the importance of professional behavior in the workplace. Claimant's conduct was not the result of an error in her understanding of the employer's expectation.

The employer discharged claimant for misconduct. Claimant is disqualified from the receipt of unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

**DECISION:** Order No. 18-UI-118424 is affirmed.

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

**DATE of Service: December 7, 2018**

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية محكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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