

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0048**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct connected with work (decision # 152309). Claimant filed a timely request for hearing. On December 27, 2018, ALJ Meerdink conducted a hearing, and on December 28, 2018 issued Order No. 18-UI-121879, affirming the Department's decision. On January 9, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Barnes Controls, Inc. employed claimant as an air conditioning technician from approximately March 2013<sup>1</sup> to October 2, 2018.

(2) Claimant's duties included driving an employer vehicle to and from worksites. On October 6, 2015, while driving an employer van in Beaverton, Oregon, claimant approached a stop sign and, without coming to a complete stop, proceeded into the intersection and made a right turn. Claimant's driving, picture, and the vehicle license plate were captured on a photo-radar camera and sent to the Beaverton Police Department. Later that month, that agency sent a citation to the employer, who was the registered owner of the van that claimant had driven. The citation was for a fine of \$265 for failing to obey a traffic control device under ORS 811.265.

(3) After the employer's owner received the citation in October of 2015, rather than respond to it, he sent an email to claimant and requested that he take care of it. Thereafter the owner forgot about the matter until the middle of December 2015, when the employer received a notice from the City of Beaverton that the fine had increased to approximately \$2,000 because the citation had been ignored. The owner then informed claimant about the notice and claimant responded that he would go to the

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<sup>1</sup> We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

courthouse “to deal with it.” Transcript at 6. When claimant went to the courthouse, personnel there told him that because the van used at the time of the citation was a company vehicle, the citation and fine was not claimant’s responsibility. Claimant then contacted the owner and reported what he had been told.

(4) In August 2018, the City of Beaverton sent a notice to the employer indicating that the fine had risen to \$2,250, had not been paid, and would be sent to collections. The owner complained to claimant about the notice and requested that claimant pay the fine. In September 2018, a collection agency contacted the employer about paying the fine. The owner asked claimant what had happened with the fine and claimant repeated that courthouse personnel had told him it was a company issue, and that they had contacted the employer on numerous occasions about it. Claimant told the owner he would not pay the fine.

(5) The owner paid the fine, and on October 2, 2018 discharged claimant for refusing to do so.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ. The employer discharged claimant, but not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct. 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 conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. In a discharge case, the employer has the burden to establish misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

In Order No. 18-UI-121879, after finding that the employer discharged claimant for failing to pay the fine for the traffic citation he had caused in 2015 while driving the employer’s vehicle, the ALJ concluded that the employer discharged claimant for misconduct, reasoning:

Because claimant’s conduct (specifically, failing to stop at a stop sign) while working for the employer [resulted in] a fine, it was reasonable to expect that he be the one to pay for the fine and resolve the issue with the City of Beaverton.

Order No. 18-UI-121879 at 2-3. While we agree with the ALJ that the employer discharged claimant for failing to pay the traffic fine at issue, we disagree that his refusal to do so constituted misconduct. Under ORS 810.439,<sup>2</sup> which governs the processing of photo radar citations in Oregon, there is a rebuttable

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<sup>2</sup> 810.439 Citations based on photo radar; response to citation.

(1) Notwithstanding any other provision of law, in the jurisdictions using photo radar:

...

presumption that the registered owner of the vehicle involved, here the employer, was the driver at the time the citation was issued and, for that reason, the registered owner is mailed and held responsible for the citation at issue. Under the statute, the registered owner, including a business, is given the option of submitting a certificate of nonliability within 30 days of the citation's mailing stating that at the time the infraction occurred, the vehicle was in the custody and control of an employee. If the business also provides the driver license number, name and address of the employee, the statute provides that the citation shall be dismissed with respect to the business entity and possibly reissued and delivered by mail or otherwise to the employee identified in the certificate of nonliability.

Under the statute and the facts here, claimant was not legally obligated to pay the ticket because the employer did not exercise its option to submit a certificate of nonliability with respect to the citation and identify claimant as the driver at the time in question, thereby causing the citation to be dismissed against the employer. Because the employer did not take those steps, it remained legally obligated to pay the traffic fine at issue and did not have the "right to expect" claimant to do so. For that reason, claimant's failure to pay the fine did not constitute misconduct under OAR 471-030-0038(1)(c).

The employer discharged claimant, but not for misconduct under ORS 657.176(2). Claimant is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

**DECISION:** Order No. 18-UI-121879 is set aside, as outlined above.<sup>3</sup>

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

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(b) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section.

(c) A person issued a citation under this subsection may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (3) of this section or may make any other response allowed by law.

(2) A citation issued on the basis of photo radar may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver ...

...

(3)(b) If a business or public agency responds to a citation issued under subsection (1) of this section by submitting a certificate of nonliability within 30 days from the mailing of the citation stating that at the time of the alleged...violation the vehicle was in the custody and control of an employee ... and if the business ... provides the driver license number, name and address of the employee,...the citation shall be dismissed with respect to the business . The citation may then be issued and delivered by mail or otherwise to the employee...identified in the certificate of nonliability.

(4) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under subsection (1) of this section, a default judgment under ORS 153.102 may be entered for failure to appear after notice has been given that the judgment will be entered. ...

<sup>3</sup> This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**DATE of Service: February 13, 2019**

**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 بمحكمة الإستئناف 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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