

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0135**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 13, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 144700). Claimant filed a timely request for hearing. On January 22, 2019, ALJ S. Hall conducted a hearing and issued Order No. 19-UI-123158, affirming the Department's decision. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Pacific Pattern Tech employed claimant as a computer numeric controlled (CNC) machine apprentice from October 29, 2018 until November 15, 2018.

(2) Claimant was in training to operate the CNC machine for the employer. A CNC machine was an automated machine that cut metals and other materials. The cutters in the CNC machine performed cutting operations by turning at very high rates of speed. Before hire, claimant had worked for over two years operating a CNC machine for another employer.

(3) The employer expected that claimant would not place his hands in the CNC machine when the machine and cutters were operating because severe injury could result. Claimant understood the employer's expectation as a matter of common sense.

(4) On two occasions before November 13, 2018, claimant placed one or both of his hands in the CNC machine when the cutters were operating. On each occasion, claimant's supervisor told him that he should not place his hands in the machine when the cutters were operating. The supervisor told claimant that he needed to turn off the CNC machine before putting his hands in it.

(5) On November 13, 2018, claimant was using the CNC machine to cut some aluminum. The aluminum was supported by gauge blocks inside the CNC machine. While the CNC machine was on and the cutters were operating, claimant reached into the machine with his hand to pull out the blocks. Claimant's supervisor observed what he had done and told him not to place his hands in the CNC machine while it was on and the cutters were operating.

(6) On November 15, 2018, the employer discharged claimant for placing his hands in the CNC machine while the cutters were operating on November 13. The employer did so because it was unwilling to allow claimant to continue working in an unsafe manner.

**CONCLUSIONS AND REASONS:** 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.

At hearing, claimant did not disagree that he reached into the CNC machine on November 13 while the cutters were operating. Audio at ~13:44. The issue is whether claimant understood that the employer prohibited him from doing so. Claimant contended that he had “no memory” of the employer warning him at any time about putting his hands in the CNC machine while the cutters were operating. Audio at ~15:04, ~16:22. Claimant further contended that his prior employer of over two years did not have an “official” policy about not reaching into an operating CNC machine, that it was a “pretty common practice” to reach into the CNC machine to make adjustments while cutters were operating, and that employer’s safety policy was “use your judgment; don’t get hurt.” Audio at ~16:02. Claimant’s testimony about his unqualified ignorance of any expected safety protocols when operating a CNC machine is not credible. It is a basic, common sense expectation in an industry involving the operation of machines that cut and can maim body parts that an operator not put his hands in the machine when it is operating and cutting. It is contrary to common experience that any employer would have the blasé attitude of letting its workers assume the risk of injury and allowing them to use the CNC machine in as safe or unsafe a manner as they wished. Claimant’s testimony professing obliviousness to the employer’s expectation that he not reach into the CNC machine while it was in operation was not plausible, not likely, and not consistent with common sense. By putting his hand into the CNC machine while it was on and the cutters were operating, claimant willfully violated the employer’s expectations.

Claimant’s willful violation of the employer’s expectation may be excused if it was an isolated instance of poor judgment under OAR 471-030-0038(3)(c). To constitute an isolated instance of poor judgment, however, claimant’s behavior at issue must have been, among other things, single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Claimant did not challenge the employer’s testimony that he reached into an operating CNC machine on at least two previous occasions. For the reasons discussed above, claimant likely knew when he did so that he was not complying with the employer’s standards. Because claimant willfully violated the employer’s standards on two occasions prior to November 13, his behavior on November 13 was neither a single nor infrequent violation of the employer’s standards. Claimant’s willful violation of the employer’s standards on November 13 is not excused from constituting misconduct as an isolated instance of poor judgment.

Nor may claimant’s willful violation of the employer’s expectation be excused as a good faith error under OAR 471-030-0038(3)(b). For the reasons discussed above, claimant’s contention that he was ignorant of the employer’s prohibition against putting his hands into an operating CNC machine was not plausible. Because claimant’s behavior on November 13 was not the result of misunderstanding the

employer's expectations or believing that he was adhering to them, there is insufficient evidence to excuse it as a good faith error.

The employer discharged claimant for unexcused misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-123158 is affirmed.

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

**DATE of Service: March 5, 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 desisyon.

## 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

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**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.

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