

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0344**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73101). Claimant filed a timely request for hearing. On March 13, 2019, ALJ Wyatt conducted a hearing, and on March 18, 2019, issued Order No. 19-UI-126569, concluding claimant's discharge was not for misconduct. On April 4, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Widewaters Hillsboro Hotel Management employed claimant from May 3, 2018 until January 2, 2019 as a front office agent.

(2) The employer permitted an employee and certain members of an employee's family to stay at its hotels, excluding the hotel where the employee worked, for a reduced rate. An employee received an employee rate. An employee's family members received a discounted friends and family rate, which was more than an employee rate. To obtain a family rate, the qualifying employee had to obtain prior approval from the general manager and complete and sign an "Associate Room Authorization Form" showing the guest's qualifying familial relationship. Exhibit 1 at 19. Claimant understood the employer's employee discount policies.

(3) On October 8, 2018, claimant authorized a reservation for a friend, not her sister, to stay at the hotel where claimant worked. Claimant completed and signed the Associate Room Authorization Form, on which claimant marked that the guest was her sister. Exhibit 1 at 17. The reservation was for the employee rate. The guest was a former employee of the employer, but claimant knew she had not been an employee for "some time" before October 2018. Transcript at 8. Claimant did not obtain authorization from the general manager to provide the guest a reduced rate.

(4) On October 12, 2018, the employer gave claimant a written warning regarding the October 8, 2018 incident. The employer warned claimant that claimant violated the employee discount policy by providing an employee rate to guest who was not an employee or family member. The employer warned

claimant that she could lose the employee rate benefit or be discharged if she violated the employer's discount policies again.

(5) From December 14 through 16, 2018, claimant authorized three nights of lodging using the employee rate for the mother of claimant's former domestic partner. Exhibit 1 at 8. On the Associate Room Authorization Form, claimant marked that the accommodation at the discounted rate was requested for her parent or parent-in-law, or parent of her domestic partner. Claimant did not obtain authorization from the general manager to provide the guest a reduced rate. The employer discovered that claimant had authorized the stay for a non-employee at the employee rate.

(6) On January 2, 2019, claimant's supervisor discharged claimant for inappropriately using the employee discount within the hotel. The supervisor gave claimant the opportunity to comment when she told claimant she was being discharged. Claimant did not tell the supervisor that the December 14 guest was the mother of claimant's former domestic partner.

**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) (December 23, 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 their conduct and knew or should have known that their conduct would probably result in a violation of the standards of behavior which an employer has the right to expect. An isolated instance of poor judgment is not misconduct. OAR 471-030-0038(3)(b).

Order No. 19-UI-126569 concluded that the employer discharged claimant, but not for misconduct, reasoning that claimant did not knowingly disregard the employer's discount policy because she "regarded her former mother-in-law as a member of her family," and therefore did not wantonly or willfully violate the employer's expectations when she approved the discounted rate for her former mother-in-law.<sup>1</sup> However, the record shows that the employer met its burden to show by a preponderance of the evidence that it discharged claimant for misconduct. *See Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976) (In a discharge case, the employer has the burden to establish claimant's misconduct by a preponderance of the evidence.)

The employer discharged claimant when it discovered that claimant had violated its discount policy by authorizing a discount rate for a guest, who was not eligible for a discounted rate, from December 14 through 16. Claimant testified that "a mother-in-law is a mother-in-law," and "just because you separate from [your domestic partner] doesn't mean that you separate from their family." Transcript at 30. However, claimant also testified that she understood that a former domestic partner did not qualify as a current domestic partner. Transcript at 30. It is therefore implausible and illogical that claimant would believe that her former mother-in-law would qualify as her current mother-in-law. The employer had also warned claimant, just two months earlier, about abusing the discount policy. That written warning

---

<sup>1</sup> Order No. 19-UI-126569 at 3.

reminded claimant that she was required to obtain a manager's approval before authorizing a discount. Yet claimant again failed to obtain a manager's approval for the discount she gave the guest on December 14 through 16, which tends to show that claimant did not believe the former mother-in-law would qualify for a discount had she sought a manager's approval. Even during the hearing, claimant appeared evasive by failing to disclose that the guest was the mother of a former domestic partner until the administrative law judge asked claimant if the domestic partner was a current or former partner. Transcript at 29. The preponderance of the evidence shows that claimant was at least wantonly negligent in failing to verify the eligibility of a former mother-in-law and obtaining a manager's approval before she gave the discount.

Although claimant was at least wantonly negligent in violating the employer's discount policy on December 14 through 16, the violation will be excused from constituting misconduct if it was an isolated instance of poor judgment under OAR 471-0300038(3)(b). To be excused as an isolated instance of poor judgment, claimant's conduct must have been, among other things, a 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). Here, claimant willfully violated the employer's discount policy on October 8, 2018 by authorizing a discount for a friend without a manager's approval, and falsely stating on the authorization form that the friend was her sister. Claimant did not allege, and the record does not otherwise show, that she made the false representation in error. Because claimant willfully or wantonly disregarded the employer's discount policy on two separate occasions, her behavior was repeated act, and not a single or infrequent occurrence. As such, the behavior for which claimant was discharged may not be excused as an isolated instance of poor judgment.

Nor may claimant's conduct in the final incident be excused as a good faith error under OAR 471-030-0038(3)(b). On this record, it is implausible that claimant sincerely believed that, after receiving the October 12, 2018 warning, her conduct in December 2018 complied with the employer's employee discount policy and expectations.

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

**DECISION:** Order No. 19-UI-126569 is set aside, as outlined above.

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

**DATE of Service:** May 8, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



# 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

## 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 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 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**

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.