

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0375**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 101129). The employer filed a timely request for hearing. On April 8, 2019, ALJ Snyder conducted a hearing, and on April 12, 2019, issued Order No. 19-UI-128099, affirming the Department's decision. On April 16, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Surftides Inn on the Beach employed claimant from June 26, 2014 until January 16, 2019, last as a rooms' manager.

(2) The employer expected claimant to refrain from sending emails from the employer's confidential email server to his personal email.

(3) Claimant experienced difficulty accessing his work emails on his telephone when he was not at work. Claimant discussed this difficulty with his managing director, and she gave claimant "the okay" "multiple times" to use an online service to store files online so that he could access them with his telephone. Audio Record at 15:51 to 16:12.

(4) On January 13, 2019, claimant sent recent work emails from the managing director to his personal email address so he could complete work when he was not onsite that the managing director had assigned to him. The managing director had also told claimant to send files containing financial information to the online service where the employer's accountant could access the files. Claimant sent the files for the accountant to the online service. Claimant did not send himself financial documents.

(5) On January 13, 2019, the managing director noticed that claimant sent himself emails from his work email to his personal email. Some emails contained "proprietary information," and confidential information regarding hotel guests and employees. Audio Record at 9:25 to 9:30.

(6) On January 16, 2019, the employer discharged claimant because he forwarded multiple emails from his work email to his personal email.

**CONCLUSIONS AND REASONS:** 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 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 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. Good faith errors are not misconduct. OAR 471-030-0038(3)(b). The employer has the burden to show claimant's misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer presented evidence showing that it had issued a warning to claimant on January 8, 2019, for failing to work his entire shift, before the final incident involving emails occurred on January 13, 2019. Audio Record at 7:57 to 8:55. However, EAB customarily assesses only the final incident preceding the discharge to determine if claimant engaged in misconduct if, as here, the employer knew of the prior incident when it occurred. The evidence from the employer's human resources representative was that claimant's conduct in sending himself emails from the employer's work email on January 13 prompted the managing director to discharge claimant, and that until that incident, the employer had given claimant only a warning for the January 8 incident. Audio Record at 10:49 to 11:15. Under these circumstances, having given claimant a warning and not discharged him after the January 8 incident occurred, the employer presumably did not consider the January 8 incident sufficiently serious to merit discharge. The January 13 incident is, therefore, the proper focus of the misconduct analysis.

The employer discharged claimant for sending emails from the employer's server to his personal email address on January 13, 2019. The employer asserted that the emails contained proprietary and accounting information, and confidential employee and guest information. Claimant did not contest that the emails contained confidential information, and arguably should have known as a matter of common sense that the employer would lose its ability to keep that information secure if he sent it from the employer's server to other locations. However, the record shows that claimant believed he was allowed to do so because the managing director had given him permission in the past to forward emails to an online server where he could access those emails from his telephone. The record fails to show that claimant was ever told not to forward emails from the employer's server to his personal email. Based on his understanding that the employer had given him permission to forward work emails to other locations for the purpose of completing his work while offsite, claimant sincerely believed, and had a rational basis for believing, that his conduct on January 13 either complied with the employer's expectations or, to the extent that it violated a common sense expectation, that the employer would condone the violation. Claimant's conduct on January 13 resulted from a good faith, though apparently erroneous, understanding of the employer's email expectations and not from a conscious or knowing disregard of the employer's expectations. Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant, but not for misconduct. Claimant is not disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Order No. 19-UI-128099 is affirmed.

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

**DATE of Service:** May 21, 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**

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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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