

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0389**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 140642). The employer filed a timely request for hearing. On March 26, 2019, ALJ Wyatt conducted a hearing at which claimant did not appear, and on April 3, 2019 issued Order No. 19-UI-127531, reversing the Department's decision. On April 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a document in which he asked that the hearing be reopened so he could provide evidence on his own behalf. In support of his request, claimant stated that he missed the March 26, 2019 hearing because he and his family recently had moved, he had a one-year old son, he and his wife worked separate shifts and were sleep deprived and they "forgot about checking the mail box" resulting them not receiving the notice of hearing "in time." Claimant's request to reopen is construed as a request to have EAB consider new information under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering it shows that it was prevented by factors or circumstance beyond the party's reasonable control from presenting that information at the hearing. Claimant's submission did not explain how the described circumstances were beyond his reasonable control, as regularly checking the mail is generally considered to be within an individual's reasonable control. Because receiving the notice of hearing that was duly mailed to him was within claimant's reasonable control, claimant's request to have EAB consider his additional information is denied.

**FINDINGS OF FACT:** (1) PCC Structurals Inc. employed claimant as a grinder until January 7, 2019.

(2) The employer expected claimant to refrain from disruptive and disrespectful behavior. Claimant understood the employer's expectations as a matter of common sense.

(3) On September 25, 2018, the employer issued a warning to claimant for becoming loud at work and slamming a door because he was upset. On September 27, 2018, the employer issued another warning to claimant for becoming verbally loud at work.

(4) On December 4, 2018, claimant used a grinding burr to drill to deliberately drill through a Plexiglas window in the grinding booth. That claimant drilled a hole in the window was not by accident or the result of an error, but the result of claimant's impulse or whim. On December 7, 2018, the employer issued written warning to claimant for intentionally damaging the employer's property and placed claimant on a last chance agreement.

(5) On December 21, 2018, claimant used his personal cell phone at work in violation of the employer's rules. The lead asked claimant to report to the office where the lead and a supervisor wanted to discuss claimant's use of the cell phone with him. Claimant became upset and began yelling at the lead and the supervisor in the work area. Claimant yelled "Fuck you" repeatedly at the lead and the supervisor. Claimant also yelled repeatedly, "It's all fucked up." Audio at ~13:05. The supervisor told claimant he was suspended for his behavior and asked claimant to turn in his badge. Claimant initially refused to return the badge.

(6) On January 7, 2019, the employer discharged claimant because of his December 21<sup>st</sup> behavior.

**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 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 has the burden to establish more likely than not that claimant's behavior constituted misconduct. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

Claimant did not appear at hearing, and no evidence presented at the hearing challenged the employer's version of events. Claimant knew or should have known as a matter of common sense that yelling "fuck you" in response to the lead and the supervisor having called him to the office violated the employer's standards. Nothing in the record suggests that claimant was not conscious of his conduct. By shouting foul language at the lead and the supervisor in the work area on December 21, 2018, claimant violated the standards of behavior the employer had the right to expect of him with at least wanton negligence.

Claimant's wantonly negligent behavior on December 21, 2018 may not be excused from constituting misconduct as an isolated instance of poor judgment under OAR 471-030-0038(3)(b). Behavior may only be considered an isolated instance of poor judgment if, among other things, it was 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, less than three weeks before the outburst that led to his discharge, claimant willfully damaged the employer's property by deliberately drilling a hole through the grinding booth window. Claimant had to have known as a matter of common sense that deliberately destroying the employer's property was prohibited by the employer, making his conduct in that instance willful or wantonly negligent. Because claimant's behavior on December 21, 2018 was not a single instance of willful or wantonly negligent behavior in violation of the employer's standards it may not be excused as an isolated instance of poor judgment.

Claimant's wantonly negligent behavior on December 21, 2018 also may not be excused from constituting misconduct as a good faith error under OAR 471-030-0038(3)(b). Here, there is insufficient evidence in the record to show that claimant's behavior on December 21, 2018 was the result of a misunderstanding of the employer's standards or claimant's sincere belief that the employer would condone yelling "fuck you" at the lead and supervisor. Claimant's behavior was not a good faith error.

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

**DECISION:** Order No. 19-UI-127531 is affirmed.

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

**DATE of Service:** May 22, 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**

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**  
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