

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0562**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 2, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 72546). The employer filed a timely request for hearing. On June 7, 2019, ALJ Frank conducted a hearing, and on June 14, 2019, issued Order No. 19-UI-131702, affirming the Department's decision. On June 20, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Asante employed claimant as an accounts payable specialist from July 6, 1984 until April 1, 2019.

(2) The employer expected claimant to enter invoices accurately into the employer's system to facilitate timely billing and payments. Claimant understood the employer's expectations.

(3) During the months preceding December 10, 2018, claimant had made errors inputting numbers and dates on invoices, including on utility invoices, causing the employer to miss payments and receive notices of nonpayment and shut-off notices from the utilities. On December 10, 2018, the employer gave claimant a verbal coaching requiring claimant to improve her computer and system knowledge, and accuracy inputting invoice information. Exhibit 1. The employer put claimant on a performance improvement plan to improve her accuracy in inputting invoice numbers, dates, and amounts. Exhibit 1.

(4) On January 3 and January 24, 2019, the employer ran reports detecting that claimant made "multiple" errors. Claimant's supervisor, the employer's finance manager, gave claimant a written warning instructing claimant to improve her accuracy in inputting invoice numbers, dates, and amounts. Claimant's manager asked claimant why she was making the errors, and claimant responded that she "felt like she was doing a good job." Audio Record at 17:58 to 18:19.

(5) On February 6, 2019, the employer ran a report detecting additional errors by claimant, including having input invoice information inaccurately on two invoices on February 1, 2019, and on an invoice

on February 5, 2019. Exhibit 1. Claimant's manager noted that claimant appeared to be "struggling" to complete her work. Audio Record at 11:47 to 11:57.

(6) On February 6, 2019, the employer gave claimant a final warning instructing claimant to continue to improve her accuracy in inputting invoice numbers, dates, and amounts; double check her work, and "reconcile her accounts on a monthly basis as instructed by her manager." Exhibit 1. Claimant's manager told claimant to contact one of the employer's utility companies regarding each billing statement on each account to reconcile them. The manager instructed claimant to make the contacts by email and to copy the manager on each email.

(7) Claimant continued to make errors inputting invoice information and did not contact the utility company to reconcile the accounts between February 6 and March 18, 2019. On March 25, 2019, claimant's manager reviewed claimant's progress in meeting the performance improvement plan. The manager noted that claimant had not contacted the utility company between February 6 and March 18, and asked claimant about the contacts. Claimant began contacting the utility company regarding the past invoices.

(8) On April 1, 2019, the employer discharged claimant for failing to accurately input invoice information into its computer system, and for failing to follow her manager's instruction to reconcile billing statements from a utility company.

**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. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (December 23, 2018). "[W]antonly negligent' means 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." OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The evidence shows that claimant was not meeting the employer's reasonable expectations for accuracy, and that she failed to reconcile utility statements after being instructed to do so by her manager on February 6, 2019. However, the record does not show that claimant intentionally failed to meet those expectations, or that she engaged in wantonly negligent conduct causing her unsatisfactory work performance. The record indicates that claimant lacked sufficient computer and system knowledge to complete her work accurately, and was "struggling" to complete her work. Therefore, the employer failed to show that claimant's errors inputting invoice information were not the result of inefficiencies due to a lack of job skills or abilities which, by definition, is not misconduct. See OAR 471-030-0038(3)(b). The manager instructed claimant to reconcile one company's statements "on a monthly

basis.” Exhibit 1. The record shows claimant did not contact the utility company from February 6 through March 18, 2019, but that she did do so once manager asked her about the assignment. The record is insufficient to show by a preponderance of the evidence that claimant’s delay in contacting the utility company was due to a conscious disregard of the manager’s instructions.

In sum, although there is no dispute that claimant made repeated errors such that the employer felt it necessary to discharge her, claimant’s efforts to perform her duties under the performance improvement plan, and her statement to her manager that she “felt like she was doing a good job,” demonstrate that while she was unable to meet the employer’s expectations, she was not indifferent to those expectations, and did not willfully or wantonly fail to meet them. At worst, the record shows claimant may have been careless or negligent with respect to her performance of assigned tasks, but carelessness and ordinary negligence are not enough under the applicable rules to establish misconduct.

The employer failed to establish that it discharged claimant for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-131702 is affirmed.

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

**DATE of Service:** July 26, 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**  
 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.