

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0797**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 161401). The employer filed a timely request for hearing. On August 8, 2019, ALJ Snyder conducted a hearing, and on August 9, 2019 issued Order No. 19-UI-134843, concluding claimant's discharge was for misconduct, and claimant was disqualified from receiving benefits effective May 12, 2019. On August 14, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Umatilla Ready Mix employed claimant as a mixer driver from December 2018 to May 17, 2019.

(2) Claimant experienced medical problems in early May 2019. He began taking medication, but continued to experience severe swelling in his ankles and wrists. The dispatcher told claimant he could not assign claimant to work until claimant received a full medical release.

(3) On May 13, 2019, claimant was given a release to restricted duty and referred to a specialist. The employer did not have any work for claimant consistent with the restricted duty, and the dispatcher told claimant he could not return to work until he had seen the specialist and had a full release.

(4) Claimant repeatedly called the dispatcher asking for work, and the dispatcher refused. On May 15, 2019, claimant went to the dispatcher to ask for a full workday. The dispatcher said no, and said he was sorry but there was nothing he could do without a full release.

(5) Claimant became upset and lost his temper. He said some "choice words" to the dispatcher. Audio record at 12:45-13:00. He yelled at the dispatcher and said that he was going to get an attorney. As he left the dispatcher's area, he slammed the door so hard he broke the doorknob. As he drove away, he peeled out in the parking lot.

(6) On May 17, 2019, claimant texted the general manager a message to confirm whether there was no work for him. The general manager responded that claimant had lost his temper, broken the doorknob, slammed a door, and peeled out in the parking lot, and he could not have claimant around anymore. The employer was not willing to have claimant return to work because he “throws a fit” whenever he was “called on” his behavior. Audio record at 26:10-26:15.

**CONCLUSIONS AND REASONS:** The employer discharged claimant for misconduct.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Although the employer never told claimant he was fired, the record shows that claimant was, at all relevant times, willing to continue working for the employer for an additional period of time. He had repeatedly requested to be scheduled to work by phone, spoke to the dispatcher on May 15<sup>th</sup>, and texted the general manager on May 17<sup>th</sup> demonstrating his ongoing willingness to work. It was the general manager who initiated the work separation by telling claimant the employer could not return him to work because of his behavior on May 15<sup>th</sup>. The work separation therefore was a discharge.

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). “[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). Isolated instances of poor judgment and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The employer had the right to expect claimant to refrain from losing his temper with the dispatcher, yelling, slamming a door, breaking the employer’s property, peeling out in the parking lot, and generally “throw[ing] a fit” because he was not medically released to work and could not be scheduled to work until he was. Claimant should have known, as a matter of common sense, that such behavior would violate the standards of behavior expected by any employer. Claimant’s behavior amounted to a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of him.

Claimant’s conduct cannot be excused as a good faith error. Claimant did not appear at the hearing or provide testimony about the situation that led to his work separation, and the record contains no evidence suggesting claimant sincerely believed, or had any reasonable basis to believe, that losing his temper, yelling, slamming a door, breaking a doorknob, and peeling out of the parking lot was consistent with the employer’s expectations. Nor does the record suggest that claimant sincerely believed, or had a reasonable basis for believing, the employer would excuse or condone such behavior when it occurred.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. Although it appears likely that claimant's conduct was isolated, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d). Claimant's exercise of poor judgment on May 15<sup>th</sup> was aggravated by the fact that he instigated the situation without provocation by another, chose to "throw a fit" by yelling at the dispatcher, engaged in physical acts of temper including slamming the door so hard he actually damaged the employer's property, and continued the behavior after he left by peeling out in the employer's parking lot instead of merely driving away. The employer could not trust claimant after the events of May 15<sup>th</sup> to discuss his situation rationally, or interact in an appropriately professional manner with the dispatch, or respect the employer's property. No reasonable employer would continue to employ an individual who behaved as claimant did on May 15<sup>th</sup>. Claimant's conduct therefore exceeded mere poor judgment, and is not excusable as an isolated instance of poor judgment.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits because of his work separation.

**DECISION:** Order No. 19-UI-134843 is affirmed.

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

**DATE of Service:** September 18, 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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