

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0995**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 23, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged but not for misconduct connected to work (decision # 132217). The employer filed a timely request for hearing. On September 26, 2019, ALJ Griffin conducted a hearing, and on September 30, 2019 issued Order No. 19-UI-137294, affirming the Department's decision. On October 18, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Jackson's Food Stores Inc. employed claimant, last as a store manager, from September 15, 2009 until July 12, 2019.

(2) The employer expected its employees to refrain from falsifying employer payroll documents. Claimant was aware of the employer's expectation as a matter of common sense.

(3) The employer expected its employees to digitally clock in and out during their work shift on a computerized time clock when available. The employer expected its store managers to perform 45 hours of work on-site at the manager's store location each week, and work additional time off the clock performing off-site duties such as making bank deposit runs and checking local gas prices. However, when claimant received her store manager training in approximately 2012, she was told by her district manager at that time to remain on the clock when performing off-site duties.

(4) Claimant had provided her login and password information to her assistant manager at least one month before May 13, 2019. The assistant manager occasionally had to correct or enter someone's time system entries when claimant was not at the store because the system did not always work.

(5) When claimant recorded her time in the employer's time system, claimant included the time she spent performing off-site gas price checks, bank trips, and other duties. Claimant included that time because she had been trained to remain on the clock when performing off-site duties.

(6) On July 9, 2019, the district manager logged into the employer's timekeeping system to enter time for management training he had delivered to the manager's in the district. He noticed that claimant had no time entries for the current and previous weeks. When the district manager checked the next day, he observed that claimant's hours for those days had been entered into the system.

(7) The district manager began an investigation by reviewing video surveillance of claimant's store from May 13, 2019 to July 11, 2019. He compared claimant's in and out times as reflected in the timekeeping system with the times he observed claimant enter and exit her store. He noted discrepancies between the employer's timekeeping system and claimant's store entry and exit times over 43 days that totaled 49.5 hours. Exhibit 4. Approximately half of the time discrepancies were 45 minutes or less.

(8) On July 12, 2019, employer discharged claimant for falsifying company payroll documents by including her time that she performed gas price checks, bank trips, and other off-site duties within her required 45 hours of work on-site at the manager's store location each week.

**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).

The employer discharged claimant after concluding she had been falsifying company payroll documents by misreporting her time between May 13 and July 11, 2019 in violation of its time keeping requirements. The employer asserted that it had a policy that prohibited managers from including time performing off-sites duties within their required number of in-store work hours each week. However, the employer failed to produce evidence of that written policy at hearing and also failed to establish that claimant ever acknowledged that policy in writing or otherwise.

Claimant credibly explained that the extra time reflected on her time sheet was entered to account for the time she spent performing services for the employer away from her store, and that she reported her time that way because that was how she had been trained many years before. Transcript at 19-21. Claimant

also denied that she had ever been told that if there was a problem entering her own time, that only the district manager could enter it. Transcript at 25. It also appears from this record that claimant had probably been entering her own off-site time for several years without it ever becoming an issue.

The parties' testimony was irreconcilably different. Absent a basis for concluding either party's evidence was not credible, the evidence at the hearing is no more than equally balanced. Accordingly, the employer failed to meet its burden to establish, by a preponderance of the evidence, that claimant willfully or with wanton negligence claimed off-site work hours that she knew or should have known she was not allowed to claim under the employer's policies. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976) (in a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence).

The employer discharged claimant, but not for misconduct under ORS 657.176(2)(a). Claimant is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Order No. 19-UI-137294 is affirmed.

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

**DATE of Service:** November 25, 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 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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