

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0180**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 104637). Claimant filed a timely request for hearing. On February 7, 2020, ALJ Davis conducted a hearing, and on February 11, 2020 issued Order No. 20-UI-144286, affirming the Department's decision. On February 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent it was relevant and based on the hearing record. However, claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant'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) Jones Bar employed claimant as a bartender from September 14, 2018 to October 15, 2019.

(2) To work as a bartender in Oregon, claimant needed, and had, a license from the Oregon Liquor Control Commission (OLCC). The employer expected claimant to maintain her OLCC license, which had to be renewed every five years, and to refrain from working without an OLCC license. Claimant understood the employer's expectations.

(3) Claimant worked for the employer from 10:00 p.m. on October 12, 2019 to sometime between 2:00 a.m. and 3:30 a.m. on October 13, 2019. Unknown to claimant, her OLCC license expired after October 12<sup>th</sup>. Claimant therefore did not renew her OLCC license before starting work on October 12<sup>th</sup>, and worked with an expired license for a few hours on October 13<sup>th</sup>.

(4) On October 15<sup>th</sup>, the employer discharged claimant for failing to maintain her OLCC license, and working with an expired license on October 13<sup>th</sup>.

**CONCLUSIONS AND REASONS:** Claimant's discharge was 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). The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(3)(c). "[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).

Order No. 20-UI-144286 found that the employer discharged claimant for failing to renew her OLCC license, which therefore expired.<sup>1</sup> The order then concluded that claimant was discharged for misconduct under OAR 471-030-0038(3)(c), reasoning that while claimant may not have been aware that her license had expired, her failure to renew her license was reasonably attributable to her and completely within her control, and therefore wantonly negligent.<sup>2</sup> However, the record fails to support a finding that claimant's failure to renew her license was wantonly negligent, or therefore misconduct.

Under OAR 471-030-0038(1)(c), claimant's failure to renew her OLCC license was wantonly negligent only if she *consciously* engaged in conduct she knew or should have known would probably result in her failure to renew her license. As noted in Order No. 20-UI-144286,<sup>3</sup> claimant testified at hearing that she was unaware that her license was going to expire, explaining that licenses only expired once every five years, that she "overlooked it," and that it was "just a mistake." Audio Record 15:30 to 15:55. The record does not show that claimant *consciously* engaged in conduct she knew or should have known would probably result in her failure to renew her license. Absent such a showing, the record does not establish that claimant's failure to renew her license was wantonly negligent, or therefore misconduct.

Likewise, to the extent the employer discharged claimant for working with an expired OLCC license for a few hours on October 13, 2019, the record similarly fails to show that claimant consciously did so, or that she consciously engaged in other conduct she knew or should have known would probably result in her doing so. Absent such a showing, the record fails to establish that claimant violated the employer's expectations willfully or with wanton negligence.

Claimant's discharge was not for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

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<sup>1</sup> Order No. 20-UI-144286 at 4-5.

<sup>2</sup> Order No. 20-UI-144286 at 5.

<sup>3</sup> Order No. 20-UI-144286 at 5.

**DECISION:** Order No. 20-UI-144286 is set aside, as outlined above.<sup>4</sup>

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

**DATE of Service: April 1, 2020**

**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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<sup>4</sup> This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.



# 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 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**

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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