

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0009**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 21, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 19, 2020 (decision # 92717). Claimant filed a timely request for hearing. On December 10, 2020, ALJ Snyder conducted a hearing, and on December 16, 2020 issued Order No. 20-UI-157747, modifying decision # 92717 by concluding that the employer discharged claimant for misconduct, and claimant was disqualified from receiving unemployment insurance benefits effective January 19, 2020. On January 2, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACTS:** (1) From August or September 2019 until January 21, 2020, the employer, Volt Management Corporation, employed claimant. The employer was a staffing company that assigned its employees to work site clients for temporary work assignments.

(2) On November 25, 2019, the employer assigned claimant to a temporary work assignment for one of its clients, Oracle.

(3) The employer expected claimant to report to work for his scheduled shifts. If claimant was unable to report to work for any reason, the employer expected claimant to notify the employer that he could not report and the reason why for each day he was out. It was not sufficient for claimant to contact the work site client to advise he would be out. The employer made claimant aware of these expectations via an e-mail it sent to him before he started the work assignment and during claimant's orientation on the first day of the work assignment.

(4) On January 10, 2020, and for his next few scheduled shifts, claimant did not report to work. Claimant did not notify the employer he would be out these days although he did inform the work site client that he was sick. Beginning on January 14, 2020, claimant stopped reporting to work, without notifying the employer or the work site client.

(5) On January 16, 2020, the employer left claimant a voicemail and sent him multiple e-mails inquiring about his status and whether he intended to continue with the work assignment. Claimant did not respond.

(6) On January 21, 2020, the employer discharged claimant for failing to report to work without notifying the employer.

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

In the case of individuals working for temporary agencies, employee leasing companies, or governmental programs where a state agency serves as the employer of record for individuals performing home care services, the employment relationship “shall be deemed severed at the time that a work assignment ends.” OAR 471-030-0038(1)(a) (September 22, 2020). Here, claimant was on a temporary work assignment assigned by the employer, a staffing company, and that work assignment ended on the date the employer discharged claimant. Thus, claimant’s employment relationship was severed and his work separation occurred on January 21, 2020, the date he was discharged.

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

The employer reasonably expected claimant to report to work and, if he was unable to do so, to notify the employer each day he would be out. The employer informed claimant of these expectations by e-mail before the work assignment began and during his orientation. Beginning January 10, 2020 until his discharge on January 21, 2020, claimant failed to report for his scheduled shifts and did so without informing the employer he would be out. Although claimant notified the work site client he would be out sick for a few of the days he failed to report, he eventually stopped doing that, and, in any event, merely notifying the work site client was not sufficient to meet the employer’s expectations.

Claimant asserted at hearing that he thought there was a miscommunication regarding who he was supposed to contact when calling out sick. However, claimant did not dispute that the employer informed him of its expectations by e-mail and at his orientation. Nor did he rebut the employer’s testimony that it was “extremely clear that the call out policy is to contact Volt. And you need to contact every day you’re out.” Audio Record at 25:23. More likely than not, claimant knew or should have known that repeatedly failing to report to work without notifying the employer would violate the employer’s expectations. Thus, by failing to report to his scheduled shifts without notifying the

employer that he would be out, claimant violated a reasonable employer expectation with at least wanton negligence.

Claimant's conduct is not excusable as an isolated instance of poor judgment. The following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, 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 violation of the employer's expectations was not isolated. Claimant violated them first on January 10, 2020 and his next few scheduled shifts when he failed to inform the employer he would be out and notified merely the work site client that he was sick. Thereafter, for each day he was scheduled to work until his discharge on January 21, 2020, claimant continued to violate the employer's expectations when he stopped reporting to work without notifying the employer.

Claimant's violation of the employer's expectations regarding reporting absences was not the result of a good faith error in his understanding of those expectations. Although claimant testified that he thought there was "a bit of a miscommunication" regarding who he was supposed to contact when calling out sick, the evidence is undisputed that the employer informed claimant by e-mail and during orientation that claimant was to contact the employer, not the work site client, when calling out. Audio Record at 26:21. The weight of the evidence shows that the employer's expectations were conveyed to claimant clearly and on multiple occasions. Accordingly, claimant's conduct cannot be excused as a good faith error.

Claimant was discharged for misconduct. Claimant is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 20-UI-157747 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service: February 5, 2021**

**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](https://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.

**NOTE:** This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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 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 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.