

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0214**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 4, 2020 (decision # 143253). Claimant filed a timely request for hearing. On March 22, 2021, ALJ Schmidt conducted a hearing, and on March 23, 2021 issued Order No. 21-UI-163268, reversing decision # 143253 by concluding that the employer discharged claimant, but not for misconduct. On March 26, 2021, the employer filed an application for review of 21-UI-163268 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) LLERTTOC Inc. employed claimant as a housekeeper from September 21, 2017 until October 5, 2020.

(2) The employer required employees to call in two hours before a scheduled shift to inform the employer if they expected to be absent. Claimant knew and understood this expectation.

(3) Claimant had a violent ex-boyfriend. In early September 2020, the ex-boyfriend “beat [claimant] to where [she] had to get stitches in [her] mouth.” Audio Record at 11:50. Thereafter, claimant made the ex-boyfriend move out of their house, which caused him to become more hostile toward claimant.

(4) On September 29, 2020, claimant worked her scheduled shift for the employer. Later that day, claimant went to her mother’s home. The ex-boyfriend, who “k[new] [claimant’s] whole routine,” followed claimant to her mother’s home. Audio Record at 7:37. The ex-boyfriend was carrying a nine millimeter handgun. After arriving at the mother’s home, the ex-boyfriend drew the gun, placed it to claimant’s head, and threatened to kill her. The ex-boyfriend then departed, and claimant called the police, but the ex-boyfriend remained at large for weeks thereafter.

(5) After the ex-boyfriend threatened to kill claimant, claimant was concerned that if she went to work, the ex-boyfriend would confront her there and might injure or kill her. Claimant decided to

remain at her mother's home, and therefore did not report for her scheduled shifts on September 30, 2020, October 1, 2020, and October 4, 2020. Claimant did not call the employer to advise that she would be absent for these shifts because "[she] wasn't thinking correctly, [she] was shaken up and forgot to call." Audio Record at 26:44.

(6) Claimant reported to work for her scheduled shift on October 5, 2020. When claimant arrived for her shift, the employer sent her home. The employer advised that they considered her to have voluntarily quit because she missed three shifts without calling in. Claimant would have continued to work for the employer if she had been allowed to do so.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not for misconduct.

**Nature of the Work Separation.** 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) (September 22, 2020). 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).

On October 5, 2020, claimant arrived for her scheduled shift willing to continue to work for the employer for an additional period of time. However, the employer considered claimant to have voluntarily quit because she missed her previous three shifts without calling in. As a result, the employer sent claimant home and did not allow her to continue to work. Therefore, the work separation was a discharge that occurred on October 5, 2020.

**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). 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).

The employer did not discharge claimant for misconduct. The employer expected claimant to call in before scheduled shifts to advise of anticipated absences. Because claimant did not call in before missing her shifts on September 30, 2020, October 1, 2020, and October 4, 2020, the employer discharged her. However, the record does not support that claimant's failure to call in on those days amounted to a willful or wantonly negligent violation of the employer's expectations. Claimant failed to call in prior to her absences on those days because after her ex-boyfriend threatened to kill her, "[she] wasn't thinking correctly, [she] was shaken up and forgot to call." This evidence supports that claimant did not violate the employer's call-in expectation willfully, but merely forgot about it. It also indicates that claimant did not violate the employer's call-in expectation with wanton negligence. This is because she breached that expectation after being "shook up" and

“not thinking correctly,” which supports that claimant was not conscious of her conduct or acting with indifference to the consequences of her actions when she failed to call-in. Thus, the record does not show that claimant engaged in a willful or wantonly negligent violation of the employer’s standards of behavior and, for that reason, claimant was not discharged for misconduct connected with work.

The employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on this work separation.

**DECISION:** Order No. 21-UI-163268 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 28, 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.

**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/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 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**  
 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.