

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0309**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective January 10, 2021 (decision # 75915). Claimant filed a timely request for hearing. On April 7, 2021, ALJ S. Lee conducted a hearing, and on April 13, 2021 issued Order No. 21-UI-164746, affirming decision # 75915. On April 20, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Kingsview Asset Management employed claimant as an accounting manager from June 18, 2018 until January 15, 2021. Claimant was responsible for processing the company's payroll, including her own.

(2) The employer's handbook included a policy which prohibited the "use of obscene or harassing . . . language in the workplace." Exhibit 1 at 2. Claimant was familiar with the employer's standards of conduct in the handbook, and was aware that the employer expected her not to use "obscene or harassing language" at work. Transcript at 13-14.

(3) From about May 2020 onwards, the working relationship between claimant and her supervisor, the company's director of finance, became increasingly strained. Sources of tension between the two included instances in which claimant's supervisor would try to alleviate some of claimant's workload, in which case claimant felt that he was trying to take work away from her; and instances in which the supervisor would direct claimant towards tasks that needed to be done, in which case claimant felt that

he was micromanaging her. Transcript at 9–10. Claimant viewed the supervisor’s actions as “bullying” and “disrespectful.” Transcript at 17.

(4) On December 30, 2020, claimant’s supervisor noticed a discrepancy between a vacation request that claimant had made and the amount of paid time off (PTO) that claimant had deducted from her balance in order to cover the time off. The supervisor asked claimant about the discrepancy via a chat program. Believing that the supervisor was accusing her of malfeasance, claimant responded defensively, asking him, “What is wrong with you? Do you really think im trying to get 2 days of extra vaca?” Exhibit 1 at 4. When the supervisor subsequently objected to claimant’s response and called it “unprofessional,” claimant replied, “Why are you all up in my shit? . . . You will not ever get shit from me. Good luck [with] your bullshit . . . And again go suck a dick.” Exhibit 1 at 4.

(5) On January 4, 2021, following the December 30, 2020 exchange between claimant and her supervisor, the company’s CEO met with claimant to discuss the matter. During that meeting, the CEO told claimant that he was going to try to find a way to allow claimant and her supervisor to both continue working for the employer. Claimant suggested separating herself and the supervisor as much as possible, so that they would only work together when they “absolutely had to.” Transcript at 19. The CEO suspended claimant from work with pay from January 4, 2021 until January 15, 2021 while he considered whether it would be possible for claimant to continue working for the employer.

(6) Prior to December 30, 2020, the employer had never disciplined or warned claimant about unprofessional interactions with other employees, and claimant had never previously used profanity in her interactions with her supervisor.

(7) On January 15, 2021, as a result of claimant’s use of profanity toward her supervisor on December 30, 2020 and the employer’s determination that claimant and her supervisor would not be able to continue to work together, the employer discharged claimant.

**CONCLUSIONS AND REASONS:** Claimant was discharged 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) (September 22, 2020). “[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 discharged claimant because of her hostile and profane response to her supervisor’s payroll inquiry on December 30, 2020, and the employer’s subsequent determination that claimant and her supervisor would not be able to continue working together. At hearing, claimant testified that it

“wasn’t appropriate” to respond to her supervisor the way she did, but that she did so because she had felt disrespected. Transcript at 17. The record also shows that claimant was aware that the employer expected her not to use such language at work. Therefore, claimant’s use of “obscene or harassing” language while chatting with her supervisor on December 30, 2020 was a willful or wantonly negligent violation of the employer’s standards of behavior, and not a good faith error.

Claimant’s conduct cannot be excused as an isolated instance of poor judgment. In order to be considered an isolated instance of poor judgment, the act must not, in relevant part, “make a continued employment relationship impossible.” OAR 471-030-0038(1)(d)(D). The employer determined that claimant’s hostile behavior towards her supervisor made a continued employment relationship impossible. The record shows that the employer’s determination was objectively accurate. The tension between claimant and her supervisor resulted from claimant’s having taken offense at the supervisor’s exercise of standard supervisory duties, such as delegating tasks and helping claimant manage and prioritize her workload. This culminated in claimant directing foul language at her supervisor on December 30, 2020, brought about because the supervisor had exerted a measure of oversight over a responsibility in which claimant had the opportunity to be self-serving. Claimant’s increasingly hostile responses to her supervisor’s exercise of routine supervisory tasks, as well as her own suggestion that she and her supervisor could only continue working in the same department if they had minimal contact, show that claimant’s actions on December 30, 2020 made a continued employment relationship impossible.

For the above reasons, claimant was discharged for misconduct, and is disqualified from receiving benefits effective January 10, 2021.

**DECISION:** Order No. 21-UI-164746 is affirmed.

S. Alba and D. Hettle;  
A. Steger-Bentz, not participating.

**DATE of Service:** May 26, 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](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.

**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.

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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 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  
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