

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0670**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 6, 2021, 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 March 14, 2021 (decision # 144443). Claimant filed a timely request for hearing. On August 9, 2021, ALJ Micheletti conducted a hearing, and on August 17, 2021 issued Order No. 21-UI-172725, reversing decision # 144443 by concluding that claimant discharge was not for misconduct, and did not disqualify claimant from receiving benefits. On August 20, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** 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. EAB considered the employer's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Shilo Management Corporation employed claimant as a maintenance worker from November 1, 2020 until March 21, 2021.

(2) The employer expected claimant to report for his scheduled shifts and to work all hours scheduled for each shift unless the employer gave claimant permission to leave a shift early. Claimant knew and understood those expectations.

(3) On March 2, 2021 and March 15, 2021, claimant left his scheduled shifts early because of medical issues. Although the employer believed claimant left his shifts early on those occasions because he became frustrated with work, rather than due to medical issues, they did not discipline claimant for leaving early on those occasions.

(4) On March 20, 2021, claimant reported for work and, after clocking in that morning, used the restroom and got coffee before starting his work tasks. As claimant walked back to his workstation from getting coffee, his manager approached him and began yelling at him for getting coffee and using the bathroom after clocking in. For the next several minutes, the manager followed claimant down the hallway with his voice raised, as customers looked on. Claimant then said, “I’m going to clock out, because this is going to escalate.” Transcript at 8. The manager replied, “Okay, have a good day, we’ll see you tomorrow.” Transcript at 12–13. Claimant then left the workplace. Later that day, claimant called the manager to check on the property, but the manager did not answer.

(5) On March 21, 2021, claimant reported for his shift, “with [his] tools, ready for work.” Transcript at 10. Upon his arrival, the manager told claimant that claimant did not work there anymore because the employer considered claimant to have quit work when he clocked out and left his shift early the previous day.

**CONCLUSIONS AND REASONS:** Claimant was discharged, but 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). “Work” means “the continuing relationship between an employer and an employee, and the date an individual is separated from work is the date the employer-employee relationship is severed.” OAR 471-030-0038(1)(a).

The preponderance of the evidence shows that claimant was willing to continue to work for the employer for an additional period of time on March 21, 2021 but was not allowed to do so by the employer. That claimant was willing to work for the employer for an additional period of time on that date is supported by the fact that claimant reported for work that morning “with [his] tools, ready for work.” Transcript at 10. Claimant was not allowed to continue to work by the employer on March 21, 2021 because the employer considered claimant to have quit work when he clocked out and left his shift early the previous day. Although claimant clocked out and went home early the previous day, more likely than not, this did not reflect an unwillingness to continue the employment relationship. Given that claimant departed the workplace on March 20, 2021 only after the manager said “Okay, have a good day, we’ll see you tomorrow,” and that claimant called to check in on the property’s status later that day, the preponderance of evidence supports that claimant intended merely to decline to work the rest of his shift that day, not to sever the employment relationship. Transcript at 12–13. Because the record shows that, more likely than not, claimant was willing to continue working for the employer for an additional period of time on March 21, 2021 but was not allowed to do so by the employer, the work separation was a discharge that occurred on that date.

**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) (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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b) (September 22, 2020).

The record shows that, more likely than not, claimant believed in good faith that the employer would condone his leaving early on March 20, 2021. This is supported by evidence that when claimant announced his intention to clock out and leave in order to de-escalate the situation, the manager stated “Okay, have a good day, we’ll see you tomorrow,” Transcript at 12–13. Given the manager’s choice of words, it was reasonable for claimant to interpret the manager’s statement as permitting him to follow through with his intention to leave early and excusing his conduct in doing so. That claimant had left shifts early on March 2, 2021 and March 15, 2021 without discipline from the employer also supports that, more likely than not, claimant believed in good faith that the employer would find his conduct on March 20, 2021 to be acceptable. Although claimant left his shifts early on these occasions due to medical issues, the employer believed he had done so merely because he had become frustrated with work, yet tolerated claimant’s conduct of leaving early on those occasions. Thus, the preponderance of evidence indicates that claimant made a good faith error in believing that the employer would condone his leaving early on March 20, 2021. As such, the record shows that claimant’s conduct on March 20, 2021 was, at most, a good faith error and not a willful or wantonly negligent violation of the employer’s standards of behavior. Because claimant’s conduct was a good faith error, claimant’s conduct was not misconduct.

Accordingly, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 21-UI-172725 is affirmed.

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

**DATE of Service:** September 21, 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.

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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**

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**  
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