

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0821**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged but not for misconduct and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 150558). The employer filed a timely request for hearing. On September 23, 2021, ALJ Murdock conducted a hearing, and on September 29, 2021 issued Order No. 21-UI-175948, reversing decision # 150558 by concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective January 24, 2021. On October 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) The Ukiah School District employed claimant as a library technician from June 5, 2017 until January 27, 2021.

(2) Prior to August 2020, the employer's principal supervised claimant's work and allowed claimant to work a flexible schedule. The principal also allowed claimant to work from home.

(3) In August 2020, the employer's superintendent took over supervision of claimant's work. In October 2020, the employer's superintendent informed claimant that she was expected to work a set schedule five days a week, six hours per day with each shift starting at 9:30 a.m. and ending at 4:00 p.m. The superintendent further informed claimant that she was not to work from home unless doing so had been preapproved. Claimant understood these expectations but disagreed with them because she thought it was necessary to take some work home in order to meet deadlines.

(4) The employer's school library also served as a public library for the community. Claimant performed some work that served the library's public library function, such as working on a community reader board at the local senior center and taking interlibrary loan books to Pendleton, Oregon.

(5) On December 23, 2020, claimant worked on the community reader board at the local senior center from 11:00 a.m. to 1:00 p.m. She worked in the school library from 2:00 p.m. to 5:00 p.m. that day.

(6) On December 24, 2020, claimant did not come into the school library to work. During some of the hours between 9:30 a.m. and 4:00 p.m., claimant worked from home without preapproval filling out reports. Claimant also spent time engaging in a non-work volunteer activity between 9:30 a.m. and 4:00 p.m. that day.

(7) On December 28, 2020, claimant worked in the library from 10:00 a.m. to 4:00 p.m.

(8) On December 29, 2020, claimant worked from 8:00 a.m. to 2:00 p.m. She spent approximately three and a half hours between 8:00 a.m. and 2:00 p.m. taking interlibrary loan books to Pendleton, Oregon. Claimant also worked from home without preapproval fulfilling book orders during some of the hours between 8:00 a.m. and 2:00 p.m.

(9) On December 30, 2020, claimant worked at the library from 9:30 a.m. to 4:30 p.m.

(10) December 31, 2020, claimant worked at the library from 10:00 a.m. to 2:55 p.m.

(11) On January 14, 2021, claimant submitted a time sheet for the pay period that covered December 23, 24, 28, 29, 30, and 31, 2020. Claimant listed working 9:30 a.m. to 4:00 p.m. for each of those days. Thereafter, two of the employer's other employees informed the superintendent that they thought claimant's time sheet was inaccurate.

(12) On January 21, 2021, the superintendent and claimant met to discuss the hours claimant worked on December 23, 24, 28, 29, 30, and 31, 2020. Claimant stated that she had listed six hours each day for December 23, 24, 28, 29, 30, and 31, 2020 because doing so made it easier for the superintendent's secretary to track and that any days in which she worked fewer than six hours were compensated for by extra hours she worked from home in the other weeks during the pay period.

(13) On January 27, 2021, the employer discharged claimant for failing to work her assigned hours on December 23, 24, 28, 29, 30, and 31, 2020.

**CONCLUSIONS AND REASONS:** The employer discharged claimant 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 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).

The record shows that claimant violated the employer’s expectations that she work six hours per day from 9:30 a.m. to 4:00 p.m. and that she not work from home unless preapproved. Claimant knew or should have known that failing to work her assigned hours in the library would probably result in a breach of the employer’s reasonable expectations because the record shows that in October 2020, the superintendent informed claimant of the employer’s expectations. Accordingly, claimant violated the employer’s expectations with wanton negligence by working fewer than six hours on December 23, 2020; by working from home without preapproval on December 24, 2020 and spending some of the hours between 9:30 a.m. and 4:00 p.m. that day working on a volunteer activity; by failing to work from 9:30 a.m. to 4:00 p.m. on December 28, 2020; by working from home without preapproval and failing to work from 9:30 a.m. to 4:00 p.m. on December 29, 2020; and by failing to work from 9:30 a.m. to 4:00 p.m. and working more than six hours on December 30, 2020; and by failing to work from 9:30 a.m. to 4:00 p.m. and working fewer than six hours on December 31, 2020.

Claimant’s conduct cannot be excused as an isolated instance of poor judgment. Claimant’s multiple instances of violating the employer’s expectations that she work six hours per day from 9:30 a.m. to 4:00 p.m. and that she not work from home unless preapproved did not constitute an isolated instance of

poor judgment because claimant's exercise of poor judgment was not a single or infrequent occurrence. Rather, the record shows that claimant breached the employer's expectations on numerous separate occasions on December 23, 24, 28, 29, 30, and 31, 2020, which means the conduct was a repeated act or pattern of wantonly negligent behavior and therefore not an isolated instance of poor judgment.

Claimant's conduct also cannot be excused as a good faith error. The record does not support that claimant believed in good faith that the multiple instances of her failing to work her assigned hours and working from home without preapproval was conduct that did not constitute a breach of the employer's expectations. The superintendent specifically informed claimant of the employer's expectations in October 2020. This set of expectations—that claimant work a set schedule five days a week, six hours per day with each shift starting at 9:30 a.m. and ending at 4:00 p.m. and with no work from home unless preapproved—was an abrupt departure from the flexible schedule the employer had previously allowed claimant to work. Given this stark change in the employer's expectations, which was conveyed to claimant and which claimant understood but disagreed with, the preponderance of evidence does not support claimant believed in good faith that the employer would have condoned her violations of the employer's expectations.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective January 24, 2021.

**DECISION:** Order No. 21-UI-175948 is affirmed.

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

**DATE of Service:** November 17, 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**

ទោរទៅ – ចាំពិនិត្យនេះមិនមែនជាបញ្ហាប្រឈមរបស់លោកអ្នកទេ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**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)

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