

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0866**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 9, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 2, 2021 (decision # 114222). Claimant filed a timely request for hearing. On October 7, 2021, ALJ Smith conducted a hearing, and on October 14, 2021 issued Order No. 21-UI-177129, affirming decision # 114222. On October 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Bobcat Pets LLC employed claimant as a sales associate from January 2019 to May 5, 2021.

(2) Prior to May 5, 2021, claimant had been seeking a different job that paid more than the employer.

(3) On Wednesday, May 5, 2021, claimant received a telephone call from another employer who sought to arrange an in-person job interview with claimant on May 6, 2021 for a higher-paying position. Claimant informed the other employer that he would have to schedule the interview for a different day because he was already scheduled to work for the employer on May 6, 2021. The other employer told claimant that the only other available interview date was Tuesday, May 11, 2021, or the other employer would have to postpone the interview until their next hiring window. Claimant tentatively agreed to the May 11, 2021 interview, subject to being granted leave by the employer, because Tuesday's were the employer's "slowest day," and because claimant thought he would finish the interview in the early morning hours when the employer's business was usually slow, allowing him to return to work before it became busy. Transcript at 43. Claimant subsequently engaged in discussions with his coworkers about covering for him at work during his absence on May 11, 2021.

(4) While claimant was working his shift on May 5, 2021, claimant asked the employer's manager by telephone if he could take two hours off on May 11, 2021 to attend the job interview. Claimant could not financially afford to take the whole day off. The manager was "angry" that claimant sought other employment, and told claimant that he could not have the time off because the employer did not have

sufficient staff to cover the claimant's proposed absence. Transcript at 45. When claimant told the manager that he was going to have to go to the interview because of the better pay, the manager told claimant that if he went, "don't even come back [to work]." Transcript at 46. Based on the manager's comments and "rude" demeanor, claimant believed that he had been discharged, and left the employer's work location. Transcript at 49.

(5) After claimant returned to his home on May 5, 2021, he engaged in a three-way text communication with the employer's owner and the manager. During the conversation, claimant stated his belief that the manager had discharged him during their earlier telephone conversation, and asked whether he still had a job and, if so, whether he should report the next day to the employer's Springfield or Eugene location. The employer responded that claimant had not been discharged, but did not address whether claimant was on the schedule on May 6, 2021 or where claimant should report to work that day. After additional text discussion, claimant told the group, "I'm done." Exhibit 1 at 15. Claimant did not return to work for the employer.

**CONCLUSIONS AND REASONS:** The employer discharged claimant 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." OAR 471-030-0038(1)(a).

The order under review concluded that claimant voluntarily left work because claimant's belief that he had been fired during his May 5, 2021 telephone conversation with the manager was unreasonable in light of the group text conversation that occurred later that day when the employer informed claimant that they had "not intend[ed] to discharge him." Order No. 21-UI-177129 at 3. Further, because claimant had received this clarification regarding the employer's intent, but then told the employer he was "done," and failed to appear for his scheduled shift the next day, the order under review concluded that claimant was no longer willing to work for the employer despite the availability of additional work. Order No. 21-UI-177129 at 3. The record does not support this conclusion.

The record shows that during claimant's telephone conversation with the manager, the manager was angry with claimant and rude toward him, and told him that if he went to the job interview, claimant should not "even come back [to work]." Claimant reasonably believed that the manager had discharged him, but the record shows that claimant nevertheless sought to clarify his job status later that evening during the group text conversation he had with the owner and the manager. When claimant sent a text asking whether he still had a job with the employer and, if so, whether he should report the next day to the employer's Springfield or Eugene location, the employer responded by telling claimant that he had not been discharged. However, the employer did not respond to claimant's questions regarding whether claimant remained on the schedule for work the next day, nor where he should report to work. In light of the sequence of these events, including the employer's unwillingness to address whether claimant remained on the work schedule for May 6, 2021, and, if he did, which store he should report to, the preponderance of the evidence supports the conclusion that the employer prevented claimant from continuing to work for the employer despite claimant's willingness to continue doing so. Therefore,

claimant's work separation was a discharge on May 5, 2021. The fact that claimant subsequently told the employer he was "done," does not change this conclusion because claimant's statement occurred after the employer refused to clarify whether claimant should report to work on May 6, 2021, which was after the employer discharged claimant.

**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).

The record shows that the employer discharged claimant on May 5, 2021 when claimant requested time off work to attend a work interview with a potential employer, and claimant stated that he would need to attend the interview when the employer refused to allow the time off work. To the extent the employer based its discharge decision on claimant's insistence on attending the job interview, the employer's expectation was unreasonable under the circumstances. The record showed that claimant had made significant efforts to minimize the impact his brief absence would have on the employer prior to making his leave request, including trying to obtain coworker coverage, scheduling the interview during a date and time when the employer was less busy, and planning to return to work as soon as the interview had concluded, but prior to the time when the employer typically became busy. In light of these circumstances, and because the record does not suggest that claimant had otherwise committed a willful or wantonly negligent violation of any reasonable employer expectations, the employer failed to meet their burden to show that claimant engaged in misconduct.

Claimant was discharged but not for misconduct and claimant is not disqualified from receiving benefits based on this work separation.

**DECISION:** Order No. 21-UI-177129 is set aside, as outlined above.

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

**DATE of Service:** November 24, 2021

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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 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  
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