

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0915**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 2, 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 March 14, 2021 (decision # 145627). Claimant filed a timely request for hearing. On October 22, 2021, ALJ Kaneshiro conducted a hearing, and on October 25, 2021 issued Order No. 21-UI-177906, reversing decision # 145627 by concluding that claimant was discharged but not for misconduct and was not disqualified from receiving benefits based on the work separation. On November 1, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) California Oregon Broadcasting Inc. employed claimant as a morning news anchor and producer from March 19, 2018 until March 18, 2021.

(2) On February 16, 2018, claimant entered into a contract to work for the employer for three years, beginning March 19, 2018 and ending March 18, 2021. Claimant began working for the employer under the terms of the contract on March 19, 2018.

(3) Beginning in about August 2020 and continuing into January 2021, the employer's news director, general manager, and human resources director had conversations with claimant about extending his employment contract. The general manager verbally proposed an arrangement under which claimant would remain as a morning news anchor and producer. The general manager also verbally proposed an arrangement under which claimant would work during the day and have a leadership role in the 5:00 p.m. to 6:00 p.m. newscasts. Although the general manager verbally communicated numerous different proposals for extending claimant's contract, the employer did not offer an extended employment contract to claimant in writing.

(4) In February 2021, the employer hired a new anchor to replace claimant.

(5) On claimant's last day of work under his contract, March 18, 2021, the employer's news director called claimant and informed him that the employer had terminated the anchor they had hired to replace claimant. Claimant talked with the news director and "offered if there was anything I can do." Transcript at 17. In response, the news director laughed and the two "left it at that." Transcript at 17. Claimant completed his last day of work and thereafter stopped working for the employer.

(6) During the course of claimant's employment for the employer, claimant fulfilled all the terms of the contract and did not violate any employer policies or expectations.

**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).

The preponderance of evidence shows that the employer discharged claimant on March 18, 2021. The record indicates that during the period of about August 2020 through January 2021, the employer wished to allow claimant to continue working after his contract expired given the numerous verbal proposals the employer made to extend claimant's contract. However, the record shows that upon hiring a new anchor in February 2021 to replace claimant, the employer's willingness to make continuing work available to claimant ceased. Further, claimant's conduct on his last day of work, March 18, 2021, demonstrates that he more likely than not was willing as of that day to continue working for the employer for an additional period of time. This is because on that day, claimant spoke to the employer's news director after learning of the replacement anchor's termination, and "offered if there was anything I can do," which, more likely than not, was intended as an offer to continue working in light of the replacement anchor's dismissal. Transcript at 17. The employer's news director responded by laughing at claimant's offer of assistance, which supports the conclusion that the employer was unwilling to allow claimant to continue working for an additional period of time. For these reasons, the record supports, more likely than not, that on claimant's last day of work, he was willing to continue working but was not allowed to do so by the employer. The work separation was therefore a discharge that occurred on March 18, 2021.

**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 fails to show that the employer discharged claimant because he had engaged in conduct the employer considered a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of him or a disregard of the employer's interests. The record shows that during the course of claimant's employment for the employer, claimant fulfilled all the terms of the employment contract and did not violate any employer policies or expectations. Accordingly, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a).

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

**DECISION:** Order No. 21-UI-177906 is affirmed.

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

**DATE of Service: December 8, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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**  
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