

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0949**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 2, 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 May 30, 2021 (decision # 84833). 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-177939, reversing decision # 84833 by concluding that claimant's discharge was not for misconduct, and therefore did not disqualify claimant from receiving benefits. On November 11, 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) Betst LLC employed claimant from early November 2017 to June 1, 2021. At all times, the employer expected that their employees would not delete valuable employer information without authorization.

(2) Prior to March 2021, claimant worked for the employer as a sales manager. The employer directed claimant to track certain machine-related inventory information to help the employer properly analyze its sales. Claimant originally created an "excel file" to perform the necessary tracking, and although the employer was aware of the file they were not sure where claimant stored the file. Transcript at 33. The employer believed that claimant continued to use the excel file to track the inventory information and that the excel file contained valuable inventory information. Whenever the employer asked claimant for the inventory information claimant would prepare a report of the information for the employer.

(3) Claimant also used her work computer during this time period to update the employer's policies and procedures in their "base company handbook." Transcript at 23. Claimant retained a digital copy of the updated policies and procedures on her work computer and left a printed copy of the updated handbook in a three-ringed binder in the employer's shipping room. At all times, the employer retained a copy of the base handbook in their records.

(4) In late March 2021, the employer demoted claimant from sales manager to sales representative. The employer did not tell claimant the reason for her demotion. Claimant discontinued tracking the inventory information because it was her understanding this was no longer part of her job responsibilities. Claimant also deleted certain files she kept on her work computer that only she had access to because she had to give her work computer to the new sales manager. One of the files she deleted was the excel file. Claimant believed that the excel file contained none of the employer's valuable information. Neither the new sales manager, nor any other employee, tracked the inventory information because they thought it was still claimant's responsibility to do so.

(5) From late March 2021 through June 1, 2021, the employer did not ask claimant for any of the inventory information they believe existed in the excel file due to lack of need.

(6) On June 1, 2021, the employer determined during a management meeting that they needed an inventory report and a copy of the updated handbook from claimant. The product manager left the meeting to request from claimant an inventory report from the excel file and a copy of the company handbook from claimant. Claimant showed the product manager where he could find the employer's policies and procedures on her computer. With respect to the inventory report, claimant explained that she had not been tracking inventory since her demotion because it was not part of her new job duties. Claimant also explained that when she had previously tracked inventory she had used the "ManageMore" program to conduct the tracking, instead of the excel file, and that she had deleted the excel file. Transcript at 27. The product manager returned to the meeting and informed the general manager that claimant had deleted the excel file. The general manager immediately discharged claimant for "deleting some company files that had data the company needed," including the excel file and the employer's handbook. Exhibit 1 at 3. The general manager told claimant to leave the workplace or the employer would call the police. Claimant left the workplace.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not 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).

The record shows that the employer discharged claimant, not for misconduct. The employer had the right to expect, as a matter of common sense, that claimant would refrain from deleting, without prior authorization from the employer, any computer files that contained valuable employer information, including the inventory information. The employer discharged claimant because they believed that the excel file that she deleted from her work computer after her demotion contained valuable inventory information, and because they believed that she had also deleted an updated copy of the employer's handbook.

At hearing, the evidence differed on several issues including whether claimant deleted the excel file in retaliation for her demotion, and, critically, whether the excel file actually contained the employer's valuable inventory information such that it was permanently lost when claimant deleted the excel file. Claimant testified that although as sales manager, she initially created an excel file to track the employer's inventory information, she switched to the "ManageMore" program because all of her coworkers had access to it, because she believed it would be more effective in tracking the inventory, and because it was "much easier to run the report[s]" for the employer. Transcript at 33. Claimant testified that after the switch, she retained a copy of the excel file on her work computer but, because she did not use the excel file for tracking inventory, the file never contained any employer inventory information, and therefore no valuable employer information was lost when she later deleted the excel file. Transcript at 26, 35-36. Claimant testified that when the product manager asked her on June 1, 2021 for an inventory report from the excel file, claimant explained to the product manager that she had deleted the file because, prior to being demoted, she had begun using the "ManageMore" program to track the inventory. Transcript at 28. Claimant also testified that the product manager then walked out of her office and shortly thereafter she was discharged. Transcript at 34. Claimant also testified that the inventory information remained available to claimant via the "ManageMore" program. Transcript at 27-28.

The employer presented testimony indicating that the deleted excel file contained the employer's valuable inventory information and would take the company time to "rebuild" and that, contrary to claimant's testimony, "ManageMore" representatives had told the employer that "they aren't creating new reports for customers until November." Transcript at 12, 38. Furthermore, the product manager testified that when he approached claimant on June 1, 2021 to prepare a report from the excel file for the employer's meeting, claimant told him that she had deleted the file because she was "angry" about her demotion. Transcript at 39. The employer viewed claimant's actions in deleting the file as "sabotage" and discharged her the same day. Transcript at 18.

The evidence on the aforementioned issues is, at best, equally balanced. Where, as here, the evidence in the record is no more than equally balanced, the party with the burden of persuasion - here, the employer - fails to meet their evidentiary burden. *State v. James*, 339 Or 476, 123 P3d 251, 255-256 (2005). Thus, to the extent the employer discharged claimant based on her deletion of the excel file which the employer believe contained valuable inventory information, the employer failed to meet their evidentiary burden to show that claimant committed misconduct.

To the extent the employer discharged claimant based, in part, on the purported discovery that claimant deleted the "employee handbook" from her computer, the preponderance of the evidence shows that claimant did not delete this employer information. Rather, the record shows that when the product manager asked claimant about the handbook on June 1, 2021, claimant showed the product manager

where he could find the employer's updated policies and procedures on her computer. In addition, the record shows that after claimant updated the handbook, she printed out a copy of the updated policy and placed it in a binder in the employer's shipping room and testified that the binder was still there on the day she was discharged. Transcript at 28. Finally, the record shows that the employer retained a copy of the "base company handbook" at all times. Thus, to the extent the employer based its decision, in part, on their conclusion that claimant permanently deleted the employer handbook from her work computer, the record shows that claimant did not delete this information and therefore did not commit misconduct with respect to the employer handbook.

For these reasons, the employer failed to establish that they discharged claimant for misconduct. Claimant therefore is not disqualified from receiving benefits based on this work separation.

**DECISION:** Order No. 21-UI-177939 is affirmed.

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

**DATE of Service: December 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](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.

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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 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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