

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0985**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 30, 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 September 5, 2021 (decision # 161517). Claimant filed a timely request for hearing. On November 8, 2021, ALJ Hoppe conducted a hearing, and on November 9, 2021 issued Order No. 21-UI-179385, reversing decision # 161517 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On November 17, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2).

**FINDINGS OF FACT:** (1) Centratel LLC employed claimant as a telephone service representative until September 8, 2021. The employer provides an answering service support to its customers.

(2) The employer had a "zero tolerance" policy prohibiting their employees from being rude when speaking with customers, and they expected their employees to act professionally at all times. Transcript at 10. Claimant was aware of the employer's policy and expectation. The employer also expected conversations between employees and their customers to be short and average no more than 72 seconds due to the heavy call volume. Claimant averaged 200 calls a day and, in those instances when she spoke to a "difficult caller," claimant would sometimes "struggle to find that right balance" between speaking with the difficult caller in a manner that was professional and not rude, but still staying within the short conversation timeframe the employer expected. Transcript at 19-20.

(3) Between October 11, 2018 and February 11, 2021, the employer had issued at least four written warnings to claimant counseling her “to choose [her] words more carefully, watch [her] tone and not to speak over the caller,” and to work on improving her “talk time” with callers. Claimant’s Exhibit 1 at 5.

(4) On or about February 11, 2021, the employer’s quality team randomly called claimant two times to assess her professionalism in speaking to customers. In both instances, the employer’s quality team determined that claimant had been rude and unprofessional to the quality team caller during the respective call. The employer issued claimant a final written warning based on her violation of the employer’s rudeness policy during the two calls.

(5) On September 3, 2021, claimant’s supervisor provided claimant her six-month review and noted claimant’s improvement in how she had been handling difficult callers.

(6) On September 4, 2021, claimant received a call from a customer who was upset about an earlier call they had with claimant’s coworker, who had told the customer they would send the customer a message, but the customer had still not received the message. Claimant tried to assess the issue by reviewing the prior call record and, in the process, state that the coworker had indicated in the notes she was reviewing that the customer had confirmed receipt of the message. This upset the customer even more and they stated, “That’s a goddamn lie.” Transcript at 21. Claimant raised her voice in response and told the customer, “I will help you.” Claimant’s Exhibit 1 at 4. Claimant re-sent the message to the customer and offered to place the customer in contact with her supervisor when the customer expressed dismay at claimant’s elevated voice. The customer declined to speak to a supervisor at the time, but the customer later complained to the employer that claimant had been rude and argumentative during the call. As a result of the customer’s complaint, the employer discharged claimant that day for acting “rude[ly]” during the call in violation of the employer’s rudeness policy. Transcript at 5.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but 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). Good faith errors and/or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The record shows that the employer maintained a policy that prohibited their employees from being rude during telephone conversations with their customers, and that claimant was aware of this policy. Claimant violated the policy on September 4, 2021 when she failed to act professionally by speaking rudely to a customer during a phone conversation. Claimant’s rude behavior included raising her voice

to the customer and being argumentative with the customer, and claimant acknowledged at hearing that she had exercised “poor judgment” on at least one occasion during the call. Transcript at 12. Furthermore, claimant was conscious of her behavior during the call and she knew or should have known that her behavior probably violated the employer’s rudeness policy and their expectations for employee professionalism.

However, the record also shows that the September 4, 2021 caller was already upset at the time they called claimant and presented a difficult situation for claimant to address. Furthermore, during her period of employment the record shows that claimant had struggled to balance the challenges presented by difficult callers with the employer’s competing expectations that phone calls with their customers remain short and professional. The employer had provided multiple warnings over several years to claimant about maintaining her timeliness and professionalism during calls, but the record also shows that claimant had made a conscientious effort to improve her performance in handling difficult callers, and had done so as reflected in the six-month performance review she received the day before her discharge. In light of these circumstances, the record shows that to the extent claimant was rude with the September 4, 2021 caller, her conduct was not the result of indifference to the consequences of her actions, but a good faith error in her attempt to balance the employer’s expectations, and/or a lack job skills necessary to consistently do so. Either way, claimant’s conduct during the September 4, 2021 call did not constitute misconduct under OAR 471-030-0038(3)(b).

The employer therefore failed to establish that claimant’s discharge was for misconduct. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Order No. 21-UI-179385 is affirmed.

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

**DATE of Service: December 23, 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 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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