

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0143**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 101203). The employer filed a timely request for hearing. On January 10, 2022, ALJ Lucas conducted a hearing, and on January 14, 2022 issued Order No. 22-UI-184120, reversing decision # 101203 by concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective October 17, 2021. On January 22, 2022, 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) St. Charles Health System Inc. employed claimant as an environmental services coordinator from October 31, 2015 until October 17, 2021.

(2) Pursuant to a state mandate, the employer expected claimant to provide either proof of vaccination against COVID-19 or documentation of a medical or religious exception by October 18, 2021. Claimant was aware of and understood the employer's expectation. Failure of the employer to comply with the mandate could potentially expose them to daily fines.<sup>1</sup>

(3) Under the employer's policy, if an employee requested and received an exception, the employer would have an interactive process with the employee and offer them a reasonable accommodation. The reasonable accommodation would be either to assign the employee to work from home, transfer the

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<sup>1</sup> See OAR 333-019-1010(9) ("Employers of healthcare providers or healthcare staff, contractors and responsible parties who violate any provision of this rule are subject to civil penalties of \$500 per day per violation.") (September 1, 2021 through January 31, 2022).

employee into a position that did not require vaccination against COVID-19, or place the employee on an unpaid leave of absence.

(4) Claimant was not vaccinated against COVID-19. Claimant did not wish to receive the COVID-19 vaccine because she had a heart murmur and believed the vaccine could worsen her heart problems. Claimant also “didn’t feel like it was worth it” to get vaccinated because she believed she could contract and transmit COVID-19 whether she was vaccinated or not. Transcript at 8.

(5) In early September 2021, claimant received a frequently asked questions document from the employer that explained the process for requesting a medical or religious exception. Claimant asked her supervisor about the document and the exception process. The supervisor told claimant that if claimant requested an exception, she thought the employer would place claimant on an unpaid leave of absence. Claimant believed she could not perform her job from home because it involved cleaning and delegating cleaning jobs out to members of her team. Claimant concluded that if she requested a medical exception she “still wouldn’t be allowed to work” and decided she would not request one. Transcript at 11.

(6) However, if claimant had requested and received an exception and then had an interactive process with the employer, it was possible that the employer would transfer her into a position that did not require vaccination against COVID-19 rather than place her on an unpaid leave of absence.

(7) In September or early October 2021, claimant informed the employer that she did not intend to submit proof of vaccination or request an exception by October 18, 2021. On October 17, 2021, claimant remained unvaccinated and had not submitted proof of vaccination or requested an exception. On that date, the employer discharged claimant for violating their COVID-19 vaccination policy.

**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). Good faith errors and isolated instances of poor judgment 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 breached the employer's expectation that she provide either proof of vaccination against COVID-19 or request an exception by October 18, 2021. Claimant was aware of the employer's expectation and knew that failure to provide proof of vaccination or request an exception by the October 18, 2021 deadline would violate this expectation. Claimant was not vaccinated against COVID-19 because she had a heart murmur and believed the COVID-19 vaccine could worsen her heart problems and also did not think getting vaccinated was worthwhile because she believed she could contract and transmit COVID-19 whether she got vaccinated or not. The employer advised claimant that a medical exception could be requested, and if granted, the employer would have an interactive process with claimant and offer her a reasonable accommodation in the form of either an at-home work assignment, a transfer into a position that did not require vaccination against COVID-19, or placement on an unpaid leave of absence. Claimant opted not to pursue a medical exception because she believed she would be placed on an unpaid leave of absence. However, while being placed on a leave of absence was one possibility, the record shows that had claimant requested and received an exception, it was possible that the employer would have transferred her into a position that did not require vaccination against COVID-19. In any event, the record shows that claimant willfully remained unvaccinated and willfully failed to request an exception by October 18, 2021. As such, claimant willfully violated the employer's policy by failing to either provide proof of vaccination against COVID-19 or request a medical or religious exception by the required date. Because claimant's violation was willful, it cannot be excused as a good faith error.

Claimant's conduct also is not excusable as an isolated instance of poor judgment because it exceeded mere poor judgment. Claimant's conduct exceeded mere poor judgment because claimant's opposition to receiving the COVID-19 vaccine and unwillingness to request an exception made a continued employment relationship impossible. The record shows that the employer—a healthcare provider—reasonably imposed their expectation in compliance with the state mandate, but claimant opposed receiving the COVID-19 vaccine and failed to provide either proof of vaccination or request a medical or religious exception. Continuing to employ claimant absent proof of vaccination or an exception was impossible because doing so would have placed the employer in noncompliance with the mandate and

potentially exposed them to daily fines. As such, the preponderance of evidence supports the conclusion that claimant's conduct made a continued employment relationship impossible and therefore exceeded mere poor judgment. For that reason, claimant's conduct cannot be excused as an isolated instance of poor judgment.

Claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective October 17, 2021.

**DECISION:** Order No. 22-UI-184120 is affirmed.

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

**DATE of Service:** March 7, 2022

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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