

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0258**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 10, 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 October 3, 2021 (decision # 122139). Claimant filed a timely request for hearing. On February 11, 2022, ALJ Murdock conducted a hearing, and on February 16, 2022 issued Order No. 22-UI-186594, affirming decision # 122139. On February 23, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) St. Charles Health System, Inc. employed claimant as a patient access worker from August 1, 2014 until October 8, 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) Claimant was not vaccinated against COVID-19 because she had a religious objection to receiving it based on her opposition to "putting the chemicals and stuff in [her] body." Audio Record at 15:04.

(4) On September 2, 2021, claimant asked her supervisor what would happen if she was granted a religious exception to the vaccination requirement. The supervisor informed claimant that if she requested and received an exception, the employer would place claimant on an unpaid leave of absence for up to 42 days beginning October 18, 2021. While on leave, claimant could apply for and, if hired, transfer into a remote position for the employer outside of the Oregon counties of Deschutes, Jefferson,

<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.") (effective September 1, 2021 through January 31, 2022).

and Crook. If, after 42 days of leave, claimant remained unvaccinated and had not been transferred into a remote position outside of Deschutes, Crook, or Jefferson Counties, the employer would terminate her employment.

(5) Claimant lived in Crook County. Claimant decided that she did not want to request a religious exception because if it was granted and she was hired for a remote position outside Deschutes, Crook, or Jefferson Counties, she did not want to relocate outside of Crook County.

(6) On September 3, 2021, claimant informed her supervisor that she would not get vaccinated or request an exception to the vaccination requirement by October 18, 2021.

(7) On October 8, 2021, the employer discharged claimant because she remained unvaccinated and had not submitted proof of receiving the COVID-19 vaccine or documentation of an exception. The employer had previously approved claimant for vacation leave from October 9, 2021 through October 23, 2021, and opted to “end [claimant’s] employment early, just prior to her vacation time,” because the timing of the vacation “would have put [claimant] back to work after the [mandate’s] effective date” of October 18, 2021. Audio Record at 17:55.

**CONCLUSIONS AND REASONS:** Claimant was discharged 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 record shows that the work separation was a discharge that occurred on October 8, 2021. At hearing, claimant maintained that the employer had discharged her while the witness for the employer initially testified that the work separation was a voluntary leaving. Audio Record at 4:46; 10:58. However, the employer’s witness later testified that claimant was “correct” that she was discharged and that the employer had terminated claimant’s employment “just prior to” her scheduled vacation because of claimant’s decision not to get vaccinated or request an exception to the vaccination requirement. Thus, the record shows that claimant was willing to continue working for the employer for an additional period of time but was not allowed to do so after October 8, 2021. As such, the work separation was a discharge that occurred on that date.

**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). Isolated instances of poor judgment and good faith errors 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 employer discharged claimant for refusing to either get vaccinated or request an exception to the vaccination requirement by October 18, 2021. The record shows that the employer’s vaccination policy was reasonable, given the continuing threat to public health posed by COVID-19, and the fact that the employer was required to implement the vaccination mandate or else face daily fines for noncompliance. While claimant was opposed to receiving the vaccine, claimant had the option of requesting a religious exception. Had she done so, and if her exception request was granted, the employer would have accommodated her by placing her on a 42-day unpaid leave beginning October 18, 2021 and affording her the opportunity to find a remote position outside of Deschutes, Crook, or Jefferson Counties. While claimant would have faced discharge after 42 days of leave if she had not been transferred into a remote position, the record does not show that a remote position would not have been available had claimant tried to pursue one. Although accepting a remote position outside Deschutes, Crook, or Jefferson Counties would have required claimant to relocate, the potential for relocation did not render the employer’s expectation unreasonable given that the employer’s policy was required by law and designed to protect the public from COVID-19.

Having concluded that the employer’s policy was reasonable, the analysis turns to whether claimant violated the employer’s policy willfully or with wanton negligence. The record shows that claimant knowingly breached the employer’s expectation that she provide either proof of vaccination against COVID-19 or documentation of a medical or religious exception. Claimant declined to get vaccinated

against COVID-19 because she had a religious objection to receiving the vaccine. However, claimant had the option of requesting a religious exception to the vaccine requirement but chose not to pursue it. The record therefore shows that claimant's violation was willful because claimant intentionally chose to remain unvaccinated and did not otherwise pursue an exception by the required date.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. First, claimant's refusal to provide proof of vaccination or exception documentation was not an isolated instance of poor judgment because it was an ongoing refusal to comply with the employer's policy. Second, 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 for religious reasons and failed to provide either proof of vaccination or medical or religious exception documentation. Continuing to employ claimant absent proof of vaccination or exception documentation 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's conduct also was not a good faith error. The record shows claimant was aware that she was required to either provide proof of vaccination or medical or religious exception documentation, but chose not to do either. Claimant was not operating under a mistake of fact as to what the employer expected of her. *See Hood v. Employment Dep't.*, 263 P.3d 1126, 1130 (2011) (the "error" in a good faith error analysis refers to a mistake of fact or action deriving from a mistake of fact, a good faith error is not an "exception for conscientious objectors to employer policies"). Nor does the record show that claimant believed in good faith that the employer approved of her failure to provide proof of vaccination against COVID-19 or exception documentation by the deadline.

For the above reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective October 3, 2021.

**DECISION:** Order No. 22-UI-186594 is affirmed.

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

**DATE of Service:** April 28, 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

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## 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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