

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0376**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and that claimant was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 90746). The employer filed a timely request for hearing. On March 10, 2022, ALJ Blam-Linville conducted a hearing at which claimant failed to appear, and on March 14, 2022 issued Order No. 22-UI-188546, affirming decision # 90746. On March 16, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Ron Tonkin Toyota employed claimant as a service advisor from April 22, 2019 until September 30, 2021.

(2) The employer operated a car dealership that sold and serviced cars. When the employer serviced a vehicle for a customer, they performed a multipoint inspection on the vehicle. After the service of a customer's vehicle was complete, the employer expected claimant to provide the customer with a copy of the multipoint inspection form and to review the form with the customer so that the customer was informed of any needed repairs. The employer communicated this expectation to claimant when he was hired and in weekly meetings.

(3) On September 15, 2020, the employer gave claimant a written warning for failing to review the multipoint inspection form with a customer.

(4) On August 6, 2021, claimant's manager gave claimant a coaching session reminding him that he was required to provide customers with the multipoint inspection form, and review the form with customers.

(5) Between August 6, 2021 and September 30, 2021, claimant's manager monitored surveys that customers had completed regarding their experience with claimant. The manager determined that many customers had complained about claimant's communication style, and stated that claimant had not provided the multipoint inspection form, or reviewed the form with them.

(6) On September 30, 2021, the employer discharged claimant for having failed to either provide customers with the multipoint inspection form or review the form with them.

**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).

The employer failed to meet their burden to establish that they discharged claimant for misconduct. The record supports that claimant failed on a number of occasions over the course of his employment to provide customers with the multipoint inspection form, and to review the form with customers. The record supports that the employer’s expectation regarding the inspection form was reasonable given that it was intended to ensure that customers were informed of any repairs needed to their vehicles. Furthermore, the evidence is sufficient to establish that claimant knew and understood the expectation given that claimant was informed of it when he was hired and during weekly meetings, as well as the fact that claimant was warned for violating the expectation on September 15, 2020 and received a coaching session regarding it on August 6, 2021.

However, the evidence supplied by the employer was too general to show that the violations of the employer’s expectation that resulted in claimant’s discharge, those occurring after the August 6, 2021 coaching session that were reflected in the customer surveys that claimant’s manager reviewed, were willful or wantonly negligent. The manager’s review of customer survey information indicating that claimant continued to fail to provide customers with the multipoint inspection form and review the form with customers established only that the violations occurred, not that the violations were willful or wantonly negligent. Further, the employer’s witness testified at hearing that she did not believe claimant intentionally failed to provide the form and review it with customers, but merely thought that claimant failed to “strive for improvement” in that area. Audio Record at 31:08. This evidence fails to show that claimant’s conduct was willful, given that the employer conceded that it was unintentional. Likewise, without additional concrete details, evidence that claimant did not “strive for improvement” is not sufficient to meet the employer’s burden to prove that claimant’s violations were made consciously and with indifference to the consequences, as is required to show wanton negligence. Because the employer failed to show that claimant’s violations occurring after the August 6, 2021 coaching session leading to his September 30, 2021 discharge were willful or wantonly negligent, the employer failed to meet their burden to show that they discharged claimant for misconduct connected with work.

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

**DECISION:** Order No. 22-UI-188546 is affirmed.

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

**DATE of Service:** June 1, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**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.

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