

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0460**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 16, 2022, 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 January 23, 2022 (decision # 141335). Claimant filed a timely request for hearing. On March 23, 2022, ALJ Blam-Linville conducted a hearing, and on March 29, 2022 issued Order No. 22-UI-189891, reversing decision # 141335 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On April 11, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her 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 claimant's reasonable control prevented her 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) Ranger Corporation employed claimant as a certified veterinary technician at their veterinary clinic from August 10, 2021 to January 26, 2022.

(2) The employer's employee handbook contained a policy that prohibited employees from leaving work early without obtaining prior approval but did not specify from whom an employee was required to obtain approval. The handbook listed as supervisors the employer's owner and an office manager who, as of the time of claimant's work separation, no longer worked for the employer. Claimant received the handbook when she was hired. However, over the course of claimant's employment, when claimant needed to leave work early due to illness or to call in sick, she simply notified the employer's front desk workers. Claimant left work early in this manner on three or four occasions over the course of her employment with no repercussions from the employer.

(3) On January 24, 2022, claimant began feeling ill and informed one of the employer's veterinarians that she might be sick. The veterinarian instructed claimant to get tested for COVID-19, which claimant did. The test results were negative but claimant continued to feel ill.

(4) On January 25, 2022, the employer's owner and the employer's current office manager held a meeting with claimant. In the meeting, the owner and office manager gave claimant some write-ups for past incidents.

(5) After receiving the write-ups, claimant departed the meeting, and the owner and practice manager continued to meet. Thereafter, claimant's feelings of illness from the previous day worsened. Claimant became sick to her stomach, went to the employer's bathroom, and vomited. Claimant then informed a front desk worker, an assistant, and one of the employer's veterinarians that she "had to leave immediately for throwing up in the bathroom." Transcript at 18. Claimant did not inform the owner or office manager of her intent to leave early because they were still in a meeting. Claimant did not inform the employer's other veterinarian of her intent to leave early because that veterinarian was with a client.

(6) On January 26, 2022, the employer discharged claimant for leaving work early without obtaining prior approval.

**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 filed to show that claimant's discharge was for misconduct. The employer discharged claimant for violating the employer's policy that claimant not leave work early without obtaining prior approval. The record shows that claimant did not understand that policy. Although claimant received the employee handbook that contained the policy, the policy did not specify from whom claimant was expected to obtain prior approval to leave early. While the handbook listed the owner and the employer's former office manager as supervisors, the record shows that both the owner and the current office manager were in a meeting and unavailable at the time claimant left work early due to illness on January 25, 2022. Claimant did notify a number of individuals at the clinic that she was leaving early due to illness, however, including one of the employer's veterinarians. It was reasonable for claimant to think that this veterinarian was in a supervisory position and therefore an appropriate person for claimant to notify, given that the employer operated a veterinary clinic and claimant was a veterinary technician.

While claimant only gave notice before leaving early on January 25, 2022, rather than explicitly obtaining approval as called for in the handbook, the record supports that claimant reasonably believed that giving notice before leaving early due to illness was sufficient to meet the employer's expectations. This is because the established practice during claimant's employment had been simply to notify the employer's front desk when claimant needed to leave work early due to illness. At hearing, claimant testified, and the employer's witness agreed, that claimant had left work early after giving notice in this manner on numerous occasions over the course of her employment and never received any employer discipline for that conduct. Transcript at 18, 28. The record shows that claimant's actions on January 25, 2022 notifying a front desk worker, an assistant, and one of the employer's veterinarians prior to leaving early due to illness was conduct she reasonably believed the employer would find acceptable, and therefore not a willful or wantonly negligent violation of the employer's expectations.

Accordingly, the employer did not establish that claimant violated their standards of behavior willfully or with wanton negligence. Claimant therefore was not discharged for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-189891 is affirmed.

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

**DATE of Service:** June 24, 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 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 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**  
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