

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0493**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective February 6, 2022 (decision # 144541). Claimant filed a timely request for hearing. On March 30, 2022, ALJ Ramey conducted a hearing, and on April 1, 2022 issued Order No. 22-UI-190351, reversing decision # 144541 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On April 19, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) G Street Integrated Health employed claimant as a behavioral health counselor from May 21, 2021 until February 7, 2022.

(2) The employer expected claimant to complete patient documentation within 24 to 72 hours of meeting with a patient. Claimant was aware of the employer's expectation. In order for patient documentation to be completed, claimant had to submit the documentation into the employer's electronic health records system. After claimant submitted the documentation, claimant's clinical supervisor was required to sign the documentation to complete it.

(3) On or about mid-December 2021, claimant's clinical supervisor took a two-week vacation. While the supervisor was on vacation, claimant continued to submit patient documentation into the employer's electronic health records system within 24 to 72 hours of meeting with patients. However, the supervisor did not sign and complete the documentation during that time.

(4) On January 5, 2022, claimant's clinical supervisor returned from vacation. The clinical supervisor worked with claimant to compile a list of documentation that needed to be signed and, based on compilation of the list, claimant believed the clinical supervisor signed and completed the documentation shortly thereafter. On January 11 and 12, 2022, claimant was absent from work due to a family emergency. On January 13, 2022, claimant returned to work. On that date, some of claimant's

patient documentation remained unsigned and incomplete more than 72 hours after claimant met with respective patients.

(5) On January 13, 2022, the employer gave claimant a 30-day termination notice for failing to complete patient documentation within 24 to 72 hours of meeting with patients and for being excessively absent from work. Although the notice cited both reasons, the patient documentation issue was the reason that the employer decided to issue the 30-day termination notice.

(6) After receiving the notice, claimant reported for her scheduled shifts during the beginning of the 30-day termination period, but then became ill with COVID-19. After becoming ill with COVID-19, claimant quarantined and was absent from her scheduled shifts due to illness.

(7) On February 7, 2022 claimant returned to work following her absences due to illness. Upon claimant's arrival to work on February 7, 2022, the employer discharged claimant effective that day. February 7, 2022 was only 25 days after the employer gave claimant the 30-day termination notice on January 13, 2022.

**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). Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The preponderance of evidence shows that the reason the employer discharged claimant when they did was because of her absences from work immediately prior to February 7, 2022. This is because, although the employer gave claimant a 30-day termination notice on January 13, 2022, the discharge actually occurred on February 7, 2022, which was five days earlier than called for in the termination notice. At hearing, claimant testified that her discharge was accelerated to February 7, 2022 because of her absences directly before she returned on that date. Transcript at 27-28. The employer did not rebut this testimony. More likely than not, therefore, the proximate cause of claimant's discharge were her absences directly before returning to work and being discharged on February 7, 2022, because they were the factors without which the discharge would not have occurred when it did. *See e.g. Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did). Claimant was absent from

work immediately prior to February 7, 2022 because she was ill with COVID-19. Absences due to illness are not misconduct under OAR 471-030-0038(3)(b). Therefore, to the extent claimant's absences immediately prior to February 7, 2022 were the proximate cause of her discharge, the discharge was not for misconduct.

Moreover, to the extent the proximate cause of claimant's discharge was due to claimant failing to complete patient documentation within 24 to 72 hours of meeting with patients, the employer failed to meet their burden to show that this constituted misconduct. As a preliminary matter, the record supports that absenteeism was not the primary reason the employer gave claimant 30-day termination notice on January 13, 2022. Although the employer also cited absenteeism in the 30-day termination notice, at hearing, the witness for the employer testified that the patient documentation issue was the reason the employer made the decision to discharge. Transcript at 9.

The employer did not establish that claimant violated their patient documentation expectation willfully or with wanton negligence. The employer's expectation called for claimant to complete patient documentation within 24 to 72 hours of meeting with a patient. However, the completion process required claimant's clinical supervisor to sign the documentation after claimant submitted it. At hearing, claimant testified that she always timely submitted her patient documentation and believed that her clinical supervisor had completed the documentation that remained unsigned during the supervisor's vacation. Transcript at 20, 21. The witness for the employer testified that the patient documentation claimant submitted that led the employer issuing the 30-day termination letter was not submitted within the required 24 to 72-hour timeframe. Transcript at 30-31. On the disputed matter of whether claimant timely submitted the documentation, this decision accepts claimant's evidence because the record is no more than equally balanced on the matter and, as a result, the party with the burden of persuasion – here, the employer – failed to meet their evidentiary burden. Accordingly, the record does not show that claimant failed to complete patient documentation within the required timeframe willfully or with wanton negligence because she always timely submitted her documentation and signing off to complete the documentation was the clinical supervisor's responsibility.

Furthermore, claimant reasonably believed based on the clinical supervisor's compilation of a list of unsigned documentation, that the supervisor had signed off on the patient documentation that remained incomplete shortly after the supervisor returned from vacation on January 5, 2022. The record does not show that claimant in any way interfered with or acted with indifference toward the supervisor's responsibility to sign the documentation claimant had submitted. While the documentation remained incomplete as of January 13, 2022, that was not due to any willful or wantonly negligent conduct on claimant's part. Because the documentation remained incomplete due to the supervisor's conduct, the incomplete documentation was attributable to the supervisor, not claimant. Therefore, because the incomplete documentation was not attributable to claimant, claimant's conduct did not constitute misconduct.

For these reasons, claimant was discharged but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-190351 is affirmed.

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

**DATE of Service: July 8, 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 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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