

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1050**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 12, 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 benefits effective July 17, 2022 (decision # 131806). Claimant filed a timely request for hearing. On October 6, 2022, ALJ Adamson conducted a hearing, and on October 13, 2022 issued Order No. 22-UI-205043, reversing decision # 131806 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On October 17, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) St. Charles Health System employed claimant as a pharmacy technician from June 7, 2021, until July 28, 2022.

(2) The employer expected their employees to remain at work throughout their scheduled shifts and not to leave except under extraordinary circumstances. In such an event, they expected the employee to notify an on-duty supervisor or coworker prior to leaving.

(3) Over several weeks, claimant experienced significant conflict with a coworker with whom she was regularly scheduled to work. Claimant had complained to her supervisor and the employer's human resources department without a resolution she found satisfactory. Claimant applied to transfer to other positions but had not received a response by July 18, 2022.

(4) On July 18, 2022, claimant was working her scheduled shift when conflict again arose with the coworker. Claimant felt the coworker was preventing her from doing her job. At approximately 8:00 p.m., claimant felt so anxious that she had to immediately leave work without finishing her shift. She felt she was unable to drive and considered seeking treatment at an emergency health care facility. Prior to leaving, claimant left a voicemail and electronic message for her supervisor about the situation, stating that she could not continue working that night. Claimant did not know whether the supervisor

was on duty and claimant did not receive a response from the supervisor until the following day. Claimant did not notify anyone at the worksite that she was leaving.

(5) On July 19, 2022, claimant spoke with the supervisor and stated that she could not return to working with that coworker, but desired to continue working for the employer in any other capacity. The employer did not make such work immediately available. Claimant remained off work through July 28, 2022.

(6) On July 28, 2022, the employer notified discharged claimant for leaving her shift without proper notification on July 18, 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. OAR 471-030-0038(3)(a) (September 22, 2020) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as 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. The employer has the burden to prove misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer's witness testified that they discharged claimant solely for violating their policy against improperly leaving work during claimant's shift on July 18, 2022. Transcript at 8. The employer's policy was reasonable in that it prohibited employees from leaving early except under exigent circumstances and with proper notice to an on-duty coworker or supervisor. The employer did not believe claimant's inability to continue working due to anxiety caused by the conflict with her coworker was a valid reason to leave early under the policy. Transcript at 11. However, this is properly characterized as leaving for reasons of illness, given that claimant felt so anxious that she had to immediately leave work without finishing her shift, felt she was unable to drive, and considered seeking treatment at an emergency health care facility. Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b). Thus, to the extent that the employer discharged claimant for the absence itself, claimant's absence from the remainder of her shift did not constitute misconduct.

Claimant failed to notify an on-duty supervisor or coworker prior to leaving as required by the employer's policy. However, claimant made two attempts to notify her supervisor that she was leaving by calling and leaving a voicemail, as well as sending an electronic message. This supervisor apparently did not receive claimant's messages until the following day as she was not on duty at 8:00 p.m. when they were sent, but claimant was unaware the supervisor only worked days. Transcript at 26. Claimant's actions in attempting to notify the employer of her early departure from work demonstrate that she was not acting with a conscious indifference to the consequences of her actions, or with a willful or wantonly negligent disregard of the employer's interests. Given claimant's mental state, the record suggests that

claimant likely did not make a conscious decision to direct her notification to a supervisor whom she knew was off duty. While claimant's failure to ascertain whether this supervisor was on duty may have constituted negligence, her efforts to comply with the employer's notification policy while experiencing mental health difficulties were not wantonly negligent.

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

**DECISION:** Order No. 22-UI-205043 is affirmed.

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

**DATE of Service:** December 22, 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**

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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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