

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0525-R**

*EAB Decision 2023-EAB-0525 Modified on Reconsideration*  
*Order No. 23-UI-223099 Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 26, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective November 13, 2022 (decision # 123532). Claimant filed a timely request for hearing. On March 8, 2023, the parties appeared before ALJ Taylor, who postponed the hearing to permit claimant to serve her proposed exhibits on the employer. On March 24, 2023, ALJ Zeitner conducted a hearing, and on April 25, 2023 issued Order No. 23-UI-223099, affirming decision # 123532. On May 9, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On May 22, 2023, EAB issued EAB Decision 2023-EAB-0525, reversing and remanding Order No. 23-UI-223099 as unsupported by a complete record due to certain marked exhibits having not been added to the record by the Office of Administrative Hearings (OAH). On May 25, 2023, OAH supplemented the record with the missing marked exhibits, which EAB, on its own motion, treats as a basis for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) CASA Voices for Children employed claimant, most recently as an outreach coordinator, from June 1, 2018 until November 14, 2022.

(2) The employer was a nonprofit organization that managed advocates for children who participated in court proceedings in Benton and Lincoln Counties, Oregon. The employer funded their operations primarily through community fundraising. One of claimant's job duties was planning fundraising events.

(3) During the year leading up to November 14, 2022, claimant and the employer's executive director had a tense working relationship. Among other things, the tension related to claimant's belief that the executive director had reported inaccurate financial information to the employer's board of directors. Another source of tension involved the executive director's belief that claimant had mentioned that the employer was experiencing financial setbacks in a July 2022 email to a donor.

(4) Claimant was responsible for planning a fundraising event scheduled for November 18, 2022. In August 2022, claimant began making arrangements for the mid-November 2022 event. Claimant secured a venue for the event, lined up a DJ to use for the event, and created a registration webpage for the event. Claimant also identified a vendor to provide food for the event, although, just prior to claimant securing a contract with that vendor, the executive director decided not to use them.

(5) On or about November 1, 2022, the executive director assigned some tasks relating to the event to two of claimant's coworkers. On November 5, 2022, claimant became ill with COVID-19 and took a week off from work.

(6) Beginning on or about November 1, 2022 and during the week claimant was off work due to illness, her coworkers secured a different food vendor for the event. They also got back in touch with the DJ claimant had lined up for the event, and solicited sponsors and made decorations for the event. A coworker also searched claimant's office while she was off work due to illness and found some donor thank you notes and tax receipts, and some sponsorship packets to potential sponsors of the event. The employer believed these items reflected job tasks that claimant had not completed.

(7) On November 14, 2022, claimant returned to work. On that date, the employer discharged claimant. The reason the employer discharged claimant was "due to the lack of work and especially around the lack of work that was done for [the mid-November 2022 fundraising event]." Transcript at 79.

**CONCLUSIONS AND REASONS:** On reconsideration, EAB Decision 2022-EAB-0525 is modified. Order No. 23-UI-223099 is reversed. Claimant was discharged, but not for misconduct.

**Reconsideration.** ORS 657.290(3) authorizes the Employment Appeals Board on its own motion to reconsider, in its discretion, any previous decision of the Employment Appeals Board. EAB Decision 2023-EAB-0525, issued May 22, 2023, reversed and remanded Order No. 23-UI-223099 as unsupported by a complete record due to certain marked exhibits having not been added to the record by OAH. However, OAH supplemented the record with the missing marked exhibits on May 25, 2023. Accordingly, it is necessary and appropriate to reconsider EAB Decision 2023-EAB-0525. On reconsideration, EAB Decision 2023-EAB-0525 is modified. For the reasons discussed below, Order No. 23-UI-223099 is reversed.

**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).

The order under review concluded that claimant was discharged for misconduct for “not following directions, being disrespectful to the [executive] director, not completing her job duties[,] and violating policies that prohibited employees from divulging information[.]” Order No. 23-UI-223099 at 4. Other than the alleged failure to complete job duties, the record does not support that the above-listed reasons were the proximate cause of claimant’s discharge. The record also does not support that the employer met their burden to prove that claimant’s alleged failure to complete job duties amounted to misconduct.

The focus of a discharge analysis is on the proximate cause of the discharge, that is, the incident without which the discharge would not have happened 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). At hearing, the employer’s executive director testified that claimant “was dismissed due to the lack of work and especially around the lack of work that was done for this particular event,” meaning the mid-November 2022 fundraising event. Transcript at 79.

Accordingly, it was this reason, and not the other reasons explored at hearing, that constituted the proximate cause of claimant’s discharge. Therefore, claimant was discharged for misconduct only if the employer met their burden to prove that claimant’s conduct regarding this reason—her alleged failure to complete duties—was a willful or wantonly negligent violation of the employer’s expectations. The employer failed to establish this by a preponderance of the evidence.

With respect to completing tasks for the mid-November 2022 fundraiser, claimant testified at hearing that she had begun working on the event in August and secured a venue for the event, identified a DJ for the event, and created a registration webpage for the event. Transcript at 31, 77. Claimant further testified that she was originally in charge of the event entirely but that the employer held meetings in which the executive director assigned certain tasks to others. Transcript at 30-31. Claimant explained that the employer had divided among claimant, a coworker, and the executive director the task of delivering sponsorship packets to potential sponsors of the event, and that claimant had delivered all the packets for which she was responsible. Transcript at 29. Claimant stated that she had also identified a food vendor for the event, and was on the verge of securing a contract with that vendor, but that the executive director made a “late change[.]” not to use the vendor due to a modest increase in its food costs. Transcript at 33.

The employer offered testimony from claimant’s coworker who had also performed tasks for the fundraiser. The coworker testified that in early November 2022, the executive director’s assistant noticed “things weren’t happening” and the coworker volunteered to work with the assistant on tasks for the event. Transcript at 70. The coworker testified she handled delivery of some sponsorship packets and during the week claimant was out sick discovered some packets the employer “thought had been done.” Transcript at 70. The coworker explained that she and the assistant secured a different food vendor for the event, got back in touch with the DJ claimant had lined up for the event, and solicited sponsors and made decorations for the event. Transcript at 71, 77.

These accounts do not establish a willful or wantonly negligent failure on the part of claimant to complete tasks for the mid-November 2022 fundraiser. It is undisputed that claimant had completed at

least some tasks, including securing a venue for the event, lining up a DJ to use for the event, and creating a registration webpage for the event. Claimant's assertion that she had completed delivery of all sponsorship packets she was responsible for conflicts with the coworker's testimony that the coworker discovered packets in claimant's office that the employer "thought had been done." Transcript at 70. However, the existence in the record of two conflicting but balanced accounts is not a sufficient evidentiary basis for the employer to meet their burden. Moreover, claimant also testified that all event materials were kept in her office, which raises the possibility that the packets the coworker found were the responsibility of a different worker to complete, and therefore may not reflect tasks claimant had failed to complete. Transcript at 30. Additionally, the packets were found in claimant's office during the week of November 5, 2022 when she was out sick. Therefore, even if the packets discovered in claimant's office were her responsibility to deliver, the employer did not show that claimant failed to deliver them willfully or with indifference to the consequences of failing to deliver them (as is necessary to establish wanton negligence) because they did not establish that claimant failed to deliver the packets for reasons other than her unexpected absence due to illness.

The record evidence is sufficient to show that certain tasks—like securing a different food vendor for the event, getting back in touch with the DJ claimant had originally lined up for the event, and making decorations for the event—were completed by the coworker and assistant. However, the mere fact that these tasks were completed by others is not sufficient to establish a willful or wantonly negligent violation of the employer's expectations. Per claimant's account, which is equally likely as that of claimant's coworker, although claimant was initially solely responsible for the event, the executive director later assigned certain of the tasks to others. Claimant additionally testified that, if she needed assistance completing work duties, she typically would inform the executive director and the executive director would provide someone to assist. Transcript at 14. Therefore, on this record, the employer did not show that the completion of certain tasks by others was a willful or wantonly negligent violation of the employer's expectation that claimant complete those tasks because, based on the equally likely evidence provided at hearing by claimant, those tasks may have been reassigned to others with the employer's approval.

To the extent the employer discharged claimant for allegedly failing to complete other job tasks, such as failing to provide thank you notes and tax receipts to donors, which the employer believed claimant had failed to do after finding some thank you notes and tax receipts in claimant's office, the employer also did not prove misconduct. At hearing, claimant explained that the thank you notes and tax receipts discovered in her office were not reflective of incomplete work but were either duplicates or intended to be discarded because they contained incorrect addresses. Transcript at 13. The employer offered testimony from claimant's coworker on this point, but that evidence only amounted to the coworker explaining that she had found the notes and receipts in claimant's office, and no evidence was offered rebutting claimant's account that the items were duplicates or intended to be discarded. Transcript at 71. Accordingly, the employer failed to show that claimant willfully or with wanton negligence failed to provide thank you notes and tax receipts to donors.<sup>1</sup>

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<sup>1</sup> Claimant's coworker also testified that she found gift cards and \$40 cash in claimant's office, raising the possibility that these items also reflected allegedly incomplete work tasks on claimant's part. Transcript at 71. The coworker stated that she discovered these items after spending "weeks" going through claimant's office. Transcript at 71. Given the reference to a search of claimant's office that took weeks to complete and that the gift cards and cash were not cited at hearing by either the executive director or claimant as reasons for claimant's discharge on November 14, 2022, the items more likely than not were

For these reasons, the employer failed to meet their burden to show that they discharged claimant for a willful or wantonly negligent violation of their standards of behavior. Accordingly, the employer failed to establish claimant's discharge was for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** On reconsideration, EAB Decision 2023-EAB-0525 is modified. Order No. 23-UI-223099 is set aside, as outlined above.

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

**DATE of Service: July 3, 2023**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

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discovered after claimant's discharge and thus were not relevant to why the employer discharged claimant when they did. Transcript at 6, 13, 79.



# 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**

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 الإستئناف 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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