

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0952**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 22, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective April 9, 2023 (decision # 141747). Claimant filed a timely request for hearing. On July 18, 2023, ALJ Monroe conducted a hearing, and on August 16, 2023, issued Order No. 23-UI-233487, affirming decision # 141747. On August 23, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant’s written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Cabela’s employed claimant as a human resources (HR) coordinator from October 11, 2022, until April 10, 2023. Claimant reported to the employer’s senior HR manager, who oversaw several stores in the area.

(2) As an HR coordinator, claimant’s job description included the requirement to “Maintain confidentiality with all sensitive information.” Transcript at 7. Claimant was aware of this requirement. Typically, when the employer expected claimant to keep information confidential, a manager would explicitly tell her to do so.

(3) Around March 2023, the employer began a hiring process for the assistant general manager of the store at which claimant worked. That store’s group sales manager applied for the position as an internal candidate, but the employer ultimately hired an external candidate. At the time that the employer made the decision to hire the external candidate, the sales manager was on vacation. Prior to leaving for vacation, the sales manager asked claimant to “give her information should there be movement in... a position.” Transcript at 31. After deciding to hire the external candidate, the store’s general manager

scheduled a meeting with the sales manager to notify her of the hiring decision and help her plan for her professional development.

(4) On March 30, 2023, claimant's manager notified claimant that the external candidate had accepted the offer for the assistant general manager position, and directed claimant to schedule his pre-employment drug screen. Claimant's manager did not explicitly tell her that the candidate selection was confidential, but nevertheless expected her to refrain from disclosing information about whom they had hired for the position. At that point, while claimant had been directed to extend offers to successful job applicants, the employer had never directed her to notify unsuccessful applicants that they had not been chosen.

(5) Shortly after her discussion with her manager, claimant sent the sales manager, who was still on vacation, a text message notifying her that there was "movement in the role" of assistant general manager, and asking the sales manager if she wanted to hear the information from herself or from the general manager. Transcript at 36. Thereafter, claimant informed the sales manager of the employer's hiring decision. Claimant did so based on the sales manager's request to keep her informed of "movement" regarding the position, because of the sales manager's status as a manager, and because she felt that the two had a close, friendly relationship. However, the sales manager ultimately was "upset" that claimant had delivered the news to her while the sales manager was on vacation, felt that her vacation "had been ruined," and subsequently reported the matter to claimant's manager. Transcript at 11.

(6) On April 5, 2023, claimant's manager had a discussion with claimant regarding having disclosed the hiring information to the sales manager. During that conversation, claimant admitted to having done so.

(7) On April 10, 2023, the employer discharged claimant for having disclosed to the sales manager that she was not selected for the assistant general manager position, which the employer felt constituted a "confidentiality breach." Transcript at 20.

**CONCLUSIONS AND REASONS:** Claimant was discharged, 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 discharged claimant because claimant disclosed to an internal job applicant that the applicant had not been selected for the job, which the employer felt constituted a violation of confidentiality. The order under review concluded that this constituted misconduct, reasoning that

“claimant knew or should have known that disclosing the outcome of the hiring process for which the sales manager was herself a candidate would probably violate the employer’s expectations for confidentiality.” Order No. 23-UI-233487 at 3-4. The record does not support this conclusion.

The record shows that while claimant was generally aware of the employer’s expectation that she would keep sensitive information confidential, the employer did not specify that they considered information regarding the hiring of the external candidate to be sensitive. Neither does the record show that claimant either knew or had reason to know that the employer expected her to keep that information confidential. This is particularly true in light of claimant’s uncontroverted assertion that the employer would usually explicitly tell her when they expected her to keep information confidential.

Claimant offered several explanations for why she disclosed the hiring decision to the internal candidate, including that the candidate had made a request to be kept updated, that the candidate was herself a manager, and because of her belief that she and the candidate had a friendly relationship. These explanations aside, claimant could reasonably have surmised that there was no urgency which required delivering the news personally to the candidate while the latter was on vacation and that the employer, who had never asked claimant to deliver such news to an unsuccessful candidate before, probably would have preferred that she refrain from doing so in this instance. Thus, claimant arguably acted with ordinary negligence in delivering the news to the internal candidate. However, as explained above, the record does not show that claimant either knew or had reason to know that the employer specifically expected her not to share the news herself. Furthermore, although claimant’s motivations for sharing the information may have been ill-considered, it cannot be said that she acted without regard for the consequences of her actions. Therefore, the employer has not met their burden to show that claimant’s disclosure of the hiring decision to the internal candidate was a willful or wantonly negligent disregard of their standards of behavior.

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

**DECISION:** Order No. 23-UI-233487 is set aside, as outlined above.

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

**DATE of Service:** October 6, 2023

**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.

**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.

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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**

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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