

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0294**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 25, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective November 12, 2023 (decision # 64136). Claimant filed a timely request for hearing. On March 6, 2024, ALJ Chiller conducted a hearing, and on March 15, 2024, issued Order No. 24-UI-250182, affirming decision # 64136. On March 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Tyree Oil employed claimant as a delivery driver from April 27, 2023, until November 13, 2023.

(2) The employer expected their employees to operate company vehicles with reasonable care so as to prevent avoidable collisions. Claimant understood this expectation.

(3) On November 9, 2023, claimant was operating the employer's truck on a freeway. Claimant understood the speed limit in that area of the freeway to generally be 55 miles per hour, falling to 50 miles an hour while approaching a curve. Claimant was driving approximately 52 miles per hour in the center of three lanes behind a vehicle that was traveling less than 50 miles per hour. Claimant decided to use the left lane to pass the vehicle and return to the center lane. Claimant accelerated to between 58 and 61 miles per hour to enter the left lane and overtake the vehicle. Within 20 to 30 seconds after claimant entered the left lane, traffic in that lane came to a sudden stop while claimant was approximately 300 feet behind the nearest vehicle. Claimant applied the brakes as soon as he noticed the stopped traffic but collided with the vehicle in front of him, causing that vehicle to collide with other vehicles in front of it.

(4) Police did not respond to the scene of the collision and claimant was not cited for any violation of law as a result of the collision. The employer reviewed video footage recorded by equipment in the truck of the collision and the moments leading up to it. Claims for personal injury and property damage were filed by others involved in the collision against the employer's insurance company.

(5) On November 13, 2023, the employer discharged claimant for causing the November 9, 2023, collision.

**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 he caused a collision while operating the employer's vehicle. The employer expected that their employees would exercise reasonable care in the operation of work vehicles, and claimant understood this expectation. The order under review concluded that the employer discharged claimant not for causing the collision, but for "decisions he made while driving that led to the accident" that were wantonly negligent, and it was not an isolated instance of poor judgment because his violation of the speed limit exceeded poor judgment. Order No. 24-UI-250182. The record does not support these conclusions.

The employer's witness testified regarding the collision based on having reviewed video footage, which was not in evidence, of the collision and the moments preceding it. Claimant's testimony differed in some respects from the employer's account, such as the speed at which claimant was driving, the applicable speed limit, whether passing on the left was permitted where claimant attempted it, and the distance between claimant and the vehicle in front of him just prior to the collision. Without the video itself in evidence, these accounts are no more than equally balanced. Because the employer bears the burden of proof, claimant's account has not been sufficiently rebutted and the facts have been found according to claimant's testimony.

The record shows that in the minute before the collision, claimant was driving at or near the speed limit and decided to use the left lane of the freeway to pass a car that was driving at or below the speed limit in the center lane. The employer has not demonstrated that these actions were unreasonable under the circumstances or that claimant knew or should have known that they would violate the employer's expectations. Once in the left lane, claimant accelerated to overtake the vehicle he intended to pass and, more likely than not, exceeded the speed limit in doing so. However, it can reasonably be inferred that

claimant did not make a conscious decision to exceed the speed limit, as the vehicle accelerated only to the degree necessary to overtake the other vehicle, which was traveling at or below the speed limit. Claimant maintained a distance of approximately 300 feet from the vehicle in front of him while in the left lane, which appeared to claimant a reasonable distance considering the speed and movement of other traffic. At hearing, claimant was asked what he believed was “the required distance that you need to keep from a car in front of you” under the “traffic laws[.]” Transcript at 26. Claimant replied, “[P]robably 500 [feet] or more.” Transcript at 26. Rather than a set distance, ORS 811.485, defining the offense of “following too closely,” provides, in relevant part, that this offense occurs when a person “[d]rives a motor vehicle so as to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of vehicles and the traffic upon, and condition of, the highway.” ORS 811.485(1)(a). It can be inferred that claimant was continuously judging as reasonable the distance between the truck he was driving and any vehicle in front of him automatically or as a matter of habit, rather than conscious thought. Based on the freeway and traffic conditions described by claimant in his testimony, the employer has not shown that claimant consciously followed the vehicle in front of him more closely than was reasonable and prudent.

However, in the few seconds immediately preceding the collision, it can reasonably be inferred that claimant neglected to immediately notice traffic slowing or stopping ahead of him. Because claimant did not notice this immediately, he failed to decelerate sufficiently to maintain a reasonable and prudent distance from the vehicle in front of him, which was the proximate cause of the collision. The reason why claimant failed to notice the slowing or stopping traffic ahead was not apparent from the employer’s review of the video footage, and is seemingly unknown even to claimant. *See* Transcript at 8, 23. The employer has therefore not met their burden of showing that claimant’s momentary failure to notice the slowdown in traffic ahead of him—and the collision this proximately caused—involved more than ordinary negligence. Accordingly, the employer has not shown that claimant was discharged for a willful or wantonly negligent violation of the employer’s reasonable expectations.

For these 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. 24-UI-250182 is set aside, as outlined above.

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

**DATE of Service:** May 2, 2024

**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.

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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**  
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