

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0393**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 14, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for a disqualifying act, and was not disqualified from receiving benefits based on the work separation (decision # 104857). The employer filed a timely request for hearing. On April 11, 2024, ALJ Blam conducted a hearing at which claimant failed to appear, and on April 19, 2024 issued Order No. 24-UI-252645, affirming decision # 104857. On April 23, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rip City Management, LLC employed claimant as a conversions lead from October 14, 2022 until October 5, 2023.

(2) The employer had a written drug and alcohol use policy that claimant acknowledged receiving on October 13, 2022. The policy prohibited, among other things, experiencing the effects of cannabis use while at work. The policy provided for testing for the use of cannabis “in accordance with applicable law” to include situations “when behavior impairment on the job creates reasonable suspicion of use” and for “regular or random” testing of employees holding certain safety-related positions. Audio Record at 17:10. Testing performed under the policy was paid for by the employer at no expense to the employee. Testing was not required under the policy when an employee admitted to being under the influence of cannabis. *See* Audio Record at 23:06.

(3) On September 22, 2023, claimant was working and observed by his supervisor with “bright red eyes, slurring of words, falling asleep standing up, swaying back and forth while standing still, and not comprehending tasks given. . . or executing those tasks with a normal capacity.” Audio Record at 14:10. The supervisor asked claimant about what they observed, and claimant replied, “I ate a pot brownie about four to five hours ago and it just hasn’t worn off all the way.” Audio Record at 13:14.

(4) Claimant’s supervisor immediately suspended claimant from work with pay, based on his admission that the cannabis he consumed had not “worn off all the way.” The employer did not offer claimant a drug test due to their belief that claimant had admitted violating their cannabis use policy.

(5) On October 5, 2023, the employer discharged claimant for violating their cannabis use policy. Claimant had not performed work for the employer since September 22, 2023.

**CONCLUSIONS AND REASONS:** Claimant was discharged for a disqualifying act.

ORS 657.176(2)(h) requires a disqualification from unemployment insurance benefits if the individual has committed a disqualifying act as described in ORS 657.176(9) or (10). ORS 657.176(9)(a) provides that an individual is considered to have committed a disqualifying act when the individual:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;

\* \* \*

OAR 471-030-0125 (January 11, 2018) provides:

\* \* \*

(3) [A] written employer policy is reasonable if:

(a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and

(b) The policy does not require the employee to pay for any portion of the test; and

(c) The policy has been published and communicated to the individual or provided to the individual in writing; and

(d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:

(A) Probable cause for requiring the individual to submit to the test; or

(B) The policy provides for random, blanket or periodic testing.

\* \* \*

(9) The employee is discharged or suspended for committing a disqualifying act if:

(a) The employee violates or admits a violation of a reasonable written employer policy governing the use, sale, possession or effects of drugs, cannabis, or alcohol in the workplace; unless in the case of drugs the employee can show that the violation did not result from unlawful drug use.

(b) In the absence of a test, there is clear observable evidence that the employee is under the influence of alcohol in the workplace.

\* \* \*

Claimant was discharged because he admitted to violating the employer's written policy against experiencing the effects of cannabis use while at work. The order under review concluded that claimant was not discharged for a disqualifying act because the employer's written cannabis policy was not reasonable, as the policy was not sufficiently specific as to its probable cause or random drug test procedures. Order No. 24-UI-252645 at 6. The record does not support the order's conclusion that the employer's policy was not reasonable.

The employer's witness testified that their written drug and alcohol policy prohibited, among other things, experiencing the effects of cannabis use while at work. Audio Record at 19:41. Claimant signed an acknowledgement at the time he was hired that he received a written copy of the policy. The policy called for only the employer to bear the expense of any drug testing. Therefore, the policy met the first three requirements set forth in OAR 471-030-0125(3)(a)-(c) to determine whether the policy was "reasonable."

OAR 471-030-0125(3)(d) additionally requires that *when* the employer's policy provides for drug, cannabis, or alcohol testing, the employer has probable cause for requiring the individual to submit to the test, or that the policy provides for random, blanket or periodic testing. Here, the employer's policy provided for both probable cause testing and random testing under certain circumstances. However, no test was administered or offered to claimant based on claimant's admission to his supervisor that he was still feeling the effects of the cannabis he had consumed hours earlier. Because no testing was required by the policy in this instance, OAR 471-030-0125(3)(d) could not render the policy unreasonable based upon any aspect of the policy's testing procedure. Therefore, the employer's policy met all the requirements to be considered reasonable.

The record shows that claimant admitted a violation of the employer's reasonable cannabis use policy. Claimant told his supervisor that the effects of cannabis he consumed four to five hours earlier had not "worn off." This was consistent with the employer's observations of claimant's physical condition and behavior. Claimant therefore admitted a violation of the employer's reasonable policy against experiencing the effects of cannabis use while at work., and the employer discharged him because of that admission. Accordingly, under OAR 471-030-0125(9)(a), claimant was discharged for a disqualifying act.

For these reasons, claimant is disqualified from receiving unemployment insurance benefits effective October 1, 2023.

**DECISION:** Order No. 24-UI-252645 is set aside, as outlined above.

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

**DATE of Service: June 4, 2024**

**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**

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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.

**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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