

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0560**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0004059827). The employer filed a timely request for hearing. On July 9, 2024, ALJ Goodrich conducted a hearing and issued Order No. 24-UI-258464, affirming decision # L0004059827. On July 26, 2024, the employer filed an application for review of Order No. 24-UI-258464 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) O'Reilly Auto Enterprises, LLC employed claimant as an assistant manager of an auto parts store from at least 2009 until April 2, 2024.

(2) The employer expected that their assistant manager would ensure that a "keyholder" would be working in the store at all times. This was necessary because only a keyholder could authorize certain transactions on the cash register and perform other tasks essential to the store's operations. Claimant understood this expectation.

(3) On March 25, 2024, claimant, a keyholder, was scheduled to work until 3:30 p.m. Another employee who was a keyholder, M., was also working that day. At 2:30 p.m., claimant reminded M. of his upcoming 3:00 p.m. 30-minute lunch break. Claimant did not notice whether M. began his lunch break on time.

(4) At 3:30 p.m., claimant observed M. behind the counter assisting customers, and therefore assumed he had returned to work from his lunch break as scheduled. Claimant clocked out at 3:31 p.m. and left the store for the day. The employer later discovered timecard records showed that M. clocked in at 3:46 p.m. following his lunch break. The employer therefore believed that no keyholder was working from 3:31 p.m. to 3:46 p.m., and held claimant responsible for this policy violation.

(5) On April 2, 2024, the employer discharged claimant for violating their policy requiring that a keyholder be working in the store at all times. Claimant had received a “final warning” on March 12, 2024, listing various points of ongoing dissatisfaction that the employer had with her work performance, none of which involved failing to ensure that a keyholder was working at all times. Exhibit 1 at 7. The employer discharged claimant for the March 25, 2024, incident because the final warning had been issued, even though such an incident would otherwise have warranted lesser discipline than a discharge.

**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 she left the store while no other keyholder was clocked in for work. The employer reasonably expected that an assistant manager would ensure that at least one keyholder was working in the store at all times, and claimant understood this expectation. While the circumstances of March 25, 2024, resulted in a 15-minute period where no keyholder was clocked in as working, the employer has not shown that claimant violated the policy willfully or with wanton negligence.

The employer did not rebut claimant’s account of the incident, in which she reminded M. at 2:30 p.m. to take his regularly scheduled 30-minute lunch at 3:00 p.m., observed M. behind the counter assisting customers at 3:30 p.m., and clocked out for the day at 3:31 p.m. Claimant did not rebut the employer’s testimony that records showed M. clocked in, signifying the end of his lunch break, at 3:46 p.m. Further, the employer’s witness testified that M. told her that he returned from his lunch break at 3:45 or 3:46 p.m., consistent with the timecard records. Transcript at 26. However, the record does not reveal when M. clocked out to begin his scheduled 3:00 p.m. break, or why he appeared to be working at 3:30 p.m., 16 minutes before the timecard records show that his 30-minute break ended.

Possible explanations for M.’s timecard entry include that M. began his break at 3:16 p.m., took longer than a 30-minute break, or was working or appearing to work while off the clock. At hearing, the employer asserted that they expected claimant, as the assistant manager, “to make sure that the team was going to lunch, and returning [from] lunch, and that she should have just asked [M.] if he had clocked back in.” Transcript at 27. However, claimant testified in rebuttal, “I have never been asked to check a person’s timecard as to whether or not they’ve been clocked in or clocked out properly. Not once in almost 18 years[.]” Transcript at 29. The employer has therefore not shown by a preponderance of the evidence that claimant knew or should have known that, prior to assuming that M. was working, the employer expected her to check M’s timecard or otherwise confirm he was clocked in, even though she

saw him working at a time he was scheduled to be working. Moreover, if a gap in keyholder coverage was caused by claimant being mistaken in her observation that M. was behind the counter assisting customers at 3:30 p.m., or in assuming based on this observation that M. had clocked in from his break by 3:30 p.m., such a mistake constituted ordinary negligence. Accordingly, the employer has not shown that claimant violated the employer's policy willfully or with wanton negligence.

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-258464 is affirmed.

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

**DATE of Service:** August 20, 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**  
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