

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0609**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation (decision # L0004988380). The employer filed a timely request for hearing. On August 7, 2024, ALJ Janzen conducted a hearing, and on August 8, 2024, issued Order No. 24-UI-261876, affirming decision # L0004988380. On August 21, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Lowe’s Home Centers, LLC employed claimant as a merchandising service associate at their retail store from June 1, 2017, until June 11, 2024.

(2) One of claimant’s primary job tasks was to ensure that shelves in an assigned area were constantly stocked with merchandise, replenishing sold-out items with stock kept in boxes above the shelves. Claimant understood the employer’s expectations in this regard.

(3) Beginning in late December 2023, claimant suffered from a long-term illness that affected him in ways including diminished energy levels and an inability to lift or carry heavy objects. This prevented claimant from replenishing certain items in his assigned area. The illness also caused claimant to miss work, and when at work he “was basically stuck in the bathroom most of the time.” Transcript at 15.

(4) By early April 2024, claimant had been absent due to illness and personal matters on several occasions over the previous twelve months, such that he had exceeded the number of absences allowed under the employer’s attendance policy. The employer therefore advised claimant that he was subject to discipline for any future absences, including those due to illness. For reasons unknown to claimant, the employer’s third-party administrator had previously denied requests made by claimant for time off

related to his illness. Claimant was then absent on April 18 and 19, 2024 due to his illness, resulting in the issuance of a “[f]inal” warning on June 4, 2024. Exhibit 1 at 10.<sup>1</sup>

(5) On May 3, 2024, the employer warned claimant regarding a lack of productivity due to shelves not being properly stocked. Claimant did not advise the employer that he was unable to stock certain items due to his medical condition, in part because it was “very embarrassing.” Transcript at 17. Claimant’s medical condition continued to prevent him from fully stocking shelves following the warning.

(6) On June 4, 2024, the employer decided to discharge claimant for his continued failure to stock shelves properly. On June 11, 2024, the employer notified claimant of his discharge and he did not work for the employer thereafter.

**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 due to his failure “to meet all performance requirements” regarding stocking shelves. Exhibit 1 at 14. The employer reasonably expected that claimant would keep shelves he was assigned stocked with merchandise. Claimant understood this expectation and consistently met it throughout nearly seven years of employment. However, claimant did not dispute that he failed to complete the shelving tasks expected of him in the months immediately preceding his discharge, including during the final instance in June 2024 that caused the employer to decide to discharge him. Transcript at 14. Claimant attributed this failure to a physical inability to complete the tasks due to his medical condition, which the employer did not rebut that assertion. As such, claimant’s failure to stock the shelves as the employer expected was not willful.

The record shows that claimant was conscious of his failure to meet the employer’s shelving expectations, particularly following the May 3, 2024, warning, and failed to notify the employer of his inability to meet this expectation. However, the employer has not shown that claimant was indifferent to the consequences of these failures. As previously discussed, the failure to fully stock the shelves was the result of physical inability rather than conscious choice. While claimant was aware that this failure violated the employer’s expectations but decided not to notify the employer that it was due to his

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<sup>1</sup> Exhibit 1 consists of two seven-page documents, the second of which, in order of receipt as timestamped, is considered numbered 8-14.

inability to perform all of the shelving tasks, his unrebutted testimony asserted that this was a decision made out of fear of embarrassment rather than indifference to consequences. *See* Transcript at 17.

Because the employer has not shown that claimant was, more likely than not, indifferent to the consequences of his failure to notify the employer of his inability to complete all shelving tasks, they have not proven that the circumstances which led to claimant's discharge involved 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-261876 is affirmed.

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

**DATE of Service:** September 11, 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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