

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0645**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 5, 2024, the Oregon Employment Department (the Department) served notice of two administrative decisions concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective May 5, 2024 (decisions # L0004430624 and L0004498724).<sup>1</sup> Claimant filed a timely request for hearing on each decision. On August 15, 2024, ALJ Monroe conducted a hearing, and on August 21 and August 28, 2024, issued Orders No. 24-UI-263225 and 24-UI-264126, affirming decisions # L0004430624 and L0004498724. On September 7, 2024, claimant filed an application for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-263225 and 24-UI-264126. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0645 and 2024-EAB-0644).

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

**FINDINGS OF FACT:** (1) Nunn Properties, LLC and A-1 Mini Storage Properties, LLC (collectively "the employer") employed claimant primarily as a live-in manager of their self-storage facility from July 13, 2018, until May 8, 2024.

(2) One of claimant's responsibilities was to collect the cash taken in by the business, and periodically bring it to the employer's bookkeeper for accounting and depositing. The employer expected that their employees would not appropriate the employer's money to their own use, which claimant understood.

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<sup>1</sup> The Department issued two decisions rather than one because claimant worked for, and was simultaneously discharged by, two distinct legal entities under the control of a single employer. Additionally, though the administrative decisions stated that the disqualification was effective from May 5, 2024, to May 3, 2025, separation disqualifications remain in effect indefinitely until sufficient wages are earned in subject employment to requalify under law. *See* ORS 657.176.

(3) On Monday, May 6, 2024, at approximately 6:00 a.m., claimant texted the employer's office manager that he needed to speak with her. She agreed to meet claimant at the storage facility. During the meeting, claimant told the office manager that he had taken \$200 from the cash register and a \$1,340 cash deposit that he was supposed to bring to the bookkeeper that day, had lost the money gambling over the weekend, and was unable to replace it. Claimant further admitted to having gambled with the employer's money on previous occasions but had been able to replace it before it was discovered missing. Claimant offered to sign over the title to his car to the employer "in lieu of replacing the cash," and expressed concern that the employer might report the matter to law enforcement. Transcript at 16. The employer rejected claimant's offer and suspended him from work, with pay, while they investigated the matter.

(4) During the investigation, the employer's bookkeeper verified that a total of \$1,540 in cash was missing from the locations identified by claimant. The employer decided to discharge claimant for having misappropriated the money. Due to concerns that news of internal theft from the storage facility would have a negative effect on the business, and because of concerns regarding claimant's legal rights as a tenant at the facility, the employer retained an attorney to draft a separation agreement addressing these and other issues.

(5) On May 8, 2024, claimant was presented with the proposed settlement agreement by the office manager and the employer's attorney. Near the top of the first page of the four-page agreement, it stated, "**Misconduct:** Company has determined that Employee has engaged in theft of company property due to Employee's confession." Exhibit 1 at 1 (emphasis in original). The agreement contained provisions that both parties would keep its terms confidential and would not disparage each other; that claimant would voluntarily vacate and relinquish his interest in his residence at the storage facility; and that the employer would pay him \$5,000 in consideration. The employer's attorney explained each provision of the agreement to claimant and encouraged him to read it himself and seek legal counsel if he desired. Claimant signed the agreement without protest, relinquished his residence as agreed, and received the \$5,000 consideration. Claimant did not work for the employer thereafter.

**CONCLUSIONS AND REASONS:** Claimant was discharged 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). Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b).

Claimant was discharged for taking \$1,540 that had been entrusted to him by the employer and appropriating it to his own use. The employer expected that their employees would not misappropriate

their money and claimant understood this expectation. At hearing, the parties offered starkly differing accounts of the events leading to claimant's discharge.

The office manager testified that claimant requested to speak with her before the start of business on May 6, 2024, and when they met, confessed that he had taken \$200 from the cash register and \$1,340 from a cash deposit that he was supposed to make, lost it gambling, and could not replace it except by offering the title to his car. Transcript at 7-10. She also testified that upon investigation, the employer's bookkeeper confirmed that both of those amounts were missing, which claimant did not rebut. The employer decided to discharge claimant and retained an attorney to handle the matter. On May 8, 2024, they presented claimant with a proposed separation agreement that prominently stated that claimant had "confess[ed]" to theft from the employer and was being discharged for that reason. Exhibit 1 at 1. The employer's attorney testified that he "spent a good deal of time going through the agreement with [claimant], explaining generally what the provision said, that the termination was occurring because he had admitted to theft of property." Transcript at 17. The attorney further testified, "I indicated to [claimant] that he wasn't required to sign it, but that – and that he should seek independent legal advice before doing so, but he chose to go ahead and proceed with signing it anyway[.]" Transcript at 17.

In rebuttal, claimant denied having taken the money, and denied having confessed to taking the money. Transcript at 30. Claimant agreed that he had requested and attended the May 6, 2024, meeting, but testified that at the meeting he simply told the office manager that he was dissatisfied with the job and no longer wanted to live at the storage facility. Transcript at 29. Claimant explained that he thought his suspension from work was just him "going home to get some time off and to come back with a solution [to his complaints.]" Transcript at 38. Regarding the written separation agreement, claimant agreed that the employer's attorney "encouraged [him] to read the document," but testified, "Literally I didn't read anything." Transcript at 42-43. Claimant's contention that he failed to see that his confession to the theft would be acknowledged in the agreement is contradicted by the record, most significantly the document itself, which shows that the provision was given added emphasis and a prominent location at the beginning of the relatively short agreement. *See* Exhibit 1 at 1. Further, claimant admitted that he was encouraged to read the document, and contemporaneously demonstrated knowledge of the other terms it contained, including the date by which he had to vacate his residence and that he would receive \$5,000 in consideration. Therefore, more likely than not, claimant was aware that he was acknowledging having confessed to the theft by signing the agreement without objection to its contents.

In weighing the other evidence, the parties' respective actions are more consistent with the employer's account than with claimant's, and the facts have therefore been found according to the employer's account. The un rebutted evidence shows that immediately following the May 6 meeting, the employer retained an attorney to draft a separation agreement prominently stating that claimant was being discharged for having confessed to theft, and claimant signed the agreement without protesting or requesting deletion of that provision after having been encouraged to read it. These actions are inconsistent with claimant having merely expressed dissatisfaction with his job and living situation during the May 6 meeting, but consistent with claimant having confessed to theft at that time. Further, the employer's testimony that following the confession, they discovered that they were missing \$200 from the cash register and \$1,340 from a deposit under claimant's control, shows that claimant's confession was, more likely than not, true. Therefore, the employer has shown by a preponderance of the evidence that claimant willfully misappropriated \$1,540 to his own use.

Under OAR 471-030-0038(3)(b)(D), acts that violate the law exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). Gambling with funds belonging to one's employer is an act that violates the law.<sup>2</sup> Accordingly, claimant's actions cannot be excused as an isolated instance of poor judgment, and constituted misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

**DECISION:** Orders No. 24-UI-263225 and 24-UI-264126 are affirmed.

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

**DATE of Service:** September 27, 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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<sup>2</sup> *See, e.g.*, ORS 165.095(1), defining the crime of misapplication of entrusted property.



# 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 الاستئناف 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.

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