

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0681**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 30, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0005423560). The employer filed a timely request for hearing. On September 11, 2024, ALJ Chiller conducted a hearing, at which claimant failed to appear, and on September 17, 2024, issued Order No. 24-UI-266412, reversing decision # L0005423560 by concluding that claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective June 30, 2024. On September 24, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Amazon.com Services, LLC employed claimant as a driver from July 5, 2020, until July 3, 2024.

(2) The employer expected their drivers to not exceed the posted speed limit while driving employer vehicles. If a driver is presented with a situation during highway driving in which they can avoid an exit and remain on the highway by exceeding the speed limit, advancing past a car in the lane to their side, and then merging into the lane in front of that car, the employer expected the driver to remain below the speed limit, and not merge into the lane in front of the car. The employer also prohibited drivers from failing to come to a complete stop at a stoplight and from unsafely following too closely behind traffic. These expectations were part of the employer's driver safety guidelines. The employer provided claimant with training on their driver safety guidelines.

(3) On May 31, 2024, the monitoring system of the vehicle claimant drove for the employer detected that claimant had unsafely followed too closely behind traffic. On June 6, 2024, the monitoring system of the vehicle claimant drove for the employer detected that claimant had failed to come to a complete stop at a stoplight.

(4) When the employer identified that a driver was not compliant with a driver safety expectation, the employer's procedure was to have a "seek to understand" meeting with the driver. Audio Record at 12:03. In such meetings, the employer would ask for the driver's perspective of why the violation occurred and then give corrective feedback to the driver about the employer's driver safety guidelines.

(5) The employer held a seek to understand meeting with claimant to discuss the May 31, 2024, unsafe following incident and June 6, 2024, failure to come to a complete stop incident. During the meeting, the employer gave claimant corrective feedback about the employer's driver safety guidelines generally and showed video footage of the incidents to claimant. After viewing the footage, claimant told the employer that "he realized what he was doing [was] wrong in both . . . videos" and that "he would work on not doing it again." Audio Record at 17:14. On June 16, 2024, the employer gave claimant a final written warning for the May 31, 2024, and June 6, 2024, incidents.

(6) On June 26, 2024, claimant was driving one of the employer's vehicles on a highway. Another car was in the lane on claimant's passenger side, and claimant desired to merge into that lane to avoid exiting the highway. Claimant exceeded the posted speed limit, advanced in front of the car in the passenger lane, and then merged into the lane in front of the car. The monitoring system of the vehicle claimant drove detected that claimant had exceeded the speed limit.

(7) The employer held a seek to understand meeting with claimant to discuss the June 26, 2024, speeding incident. During the meeting, claimant stated that he exceeded the posted speed limit because "he had a car coming on the passenger side, and . . . he sped up to get in front of that car because he needed to merge into that lane." Audio Record at 13:01.

(8) On July 3, 2024, the employer discharged claimant for exceeding the posted speed limit while driving the employer's vehicle on June 26, 2024.

**CONCLUSIONS AND REASONS:** The employer discharged claimant 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 and good faith errors are not misconduct. OAR 471-030-0038(3)(b) (September 22, 2020).

The following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

OAR 471-030-0038(1)(d).

The employer discharged claimant for misconduct. The employer discharged claimant for exceeding the posted speed limit while driving an employer vehicle on June 26, 2024. The employer expected claimant to not exceed the speed limit while driving their vehicles. This rule against speeding was categorical, as the employer's witness testified at hearing that there was no circumstance she was aware of in which a driver was permitted to drive faster than the posted speed limit. Audio Record at 13:52. Further, the employer specifically did not exclude from the rule against speeding a situation in which, during highway driving, a driver can avoid an exit and remain on the highway by exceeding the speed limit, advancing past a car in the lane to their side, and then merging into the lane in front of the car. Rather, in that situation, the employer expected the driver to drive below the posted speed limit, exit the highway if forced to do so, and then re-enter the highway. *See* Audio Record at 14:23 (the employer's witness testifying that "if [claimant] hadn't . . . merged, it essentially would have . . . forced him to exit the freeway, um, and if exiting the freeway just to re-enter would have been a safer option, and by 'safer' I mean remaining within the posted speed limit, that is what would have been expected.").

At hearing, the employer's witness testified that in the seek to understand meeting that followed the speeding incident, claimant stated that he exceeded the speed limit because "he had a car coming on the passenger side, and . . . he sped up to get in front of that car because he needed to merge into that lane." Audio Record at 13:01; *see also* Exhibit 1 at 2. However, because claimant was nonetheless required to drive below the speed limit in that situation, the circumstances of the car in the other lane and claimant's desire to speed to get in front of it are immaterial. The fact that claimant exceeded the speed limit, regardless of why he did so, was sufficient to breach the employer's policy.

Claimant breached the policy with wanton negligence. First, the employer established that claimant should have known that his conduct of exceeding the speed limit on June 26, 2024, would probably

result in a violation of the employer's expectations. The employer provided claimant with training on their driver safety guidelines. The employer's rule against speeding was part of the employer's driver safety guidelines. The employer's rules against unsafe following and failure to come to a complete stop were also part of the employer's driver safety guidelines. Claimant was reminded of these latter aspects of the driver safety guidelines when the employer held a seek to understand meeting with claimant for violating the unsafe following and failure to completely stop rules and claimant admitted fault for the violations. Given these factors, the employer proved by a preponderance of evidence that claimant should have known that his conduct of exceeding the speed limit on June 26, 2024, would probably result in a violation of the employer's expectations.

Next, claimant was conscious of his conduct of exceeding the speed limit. During the seek to understand meeting held to discuss the June 26, 2024, speeding incident, as testified to by the employer's witness at hearing and reflected in the employer's documentary evidence admitted into the record, claimant acknowledged that he had exceeded the speed limit consciously, explaining that he did so to get in front of a car on his passenger side "because he needed to merge into that lane." Audio Record at 13:01; Exhibit 1 at 2. Finally, claimant exhibited indifference to the consequences of his actions by speeding. Though the reason claimant sped was to avoid an exit and remain on the highway by advancing past the car in the lane on his passenger side, and then merging into the lane in front of the car, the employer did not permit speeding in that situation. The record therefore supports an inference that claimant sped not for a reason beneficial to the employer, but for his own personal convenience. For these reasons, the record shows that claimant was indifferent to the consequence of his actions, was conscious of his conduct, and, at minimum, should have known that by exceeding the speed limit, a violation of the employer's expectations would probably result. Claimant therefore breached the employer's prohibition on speeding with wanton negligence.

Claimant's wantonly negligent violation was not an isolated instance of poor judgment. For that provision to apply, the act must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. The record shows that the speeding incident was part of a pattern of other willful or wantonly negligent behavior. On May 31, 2024, and June 6, 2024, claimant had violated the employer's expectations by, respectively, unsafely following another vehicle and failing to make a complete stop at a stoplight. Claimant was aware that his conduct on these occasions was prohibited because the rules prohibiting the conduct were part of the employer's driver safety guidelines, and the employer had trained claimant on the guidelines. Moreover, as testified to by the employer's witness at hearing and reflected in the employer's documentary evidence admitted into the record, in the seek to understand meeting held to discuss these violations, claimant was shown video footage of his conduct and admitted that "what he was doing [was] wrong in both . . . videos" and that "he would work on not doing it again." Audio Record at 17:14; Exhibit 1 at 1. This evidence is sufficient to conclude that claimant's unsafe following and failure to make a complete stop violations were wantonly negligent. The violations were of a similar nature and occurred close in time to claimant's speeding violation. Therefore, claimant's wantonly negligent violation of the employer's policy against speeding was part of a pattern of other wantonly negligent behavior and not an isolated instance of poor judgment.

Claimant's violation of the employer's policy against speeding was not a good faith error. The reason claimant sped was to avoid an exit and remain on the highway. It is possible to imagine a scenario in which a driver would engage in this conduct in a good faith belief that that the employer would excuse or overlook the violation of its speeding policy in order for claimant to continue on the proper route.

However, claimant did not testify at the hearing and the record otherwise lacks evidence that claimant had reason to believe in good faith that the employer would find his conduct of exceeding the speed limit to avoid an exit and remain on the highway to be acceptable.

For these reasons, the employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits effective June 30, 2024.

**DECISION:** Order No. 24-UI-266412 is affirmed.

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

**DATE of Service:** October 17, 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**

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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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