EO: Intrastate
BYE: 09-Aug-2025

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

703
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0794

Reversed
Disqualification

PROCEDURAL HISTORY: On September 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective June 16, 2024 (decision # L0005900505).[1] Claimant filed a timely request for hearing. On October 15, 2024, ALJ Hall conducted a hearing, and on November 7, 2024, issued Order No. 24-UI-272597, reversing decision # L0005900505 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On November 12, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Multnomah County School District # 1 employed claimant from August 25, 1999, to August 16, 2024. For most of claimant's tenure with the employer, she worked in the employer's information technology (IT) department. In 2021, claimant transferred to the employer's human resources (HR) department, where she worked as a data analyst.

(2) As a member of the HR department, claimant had access to the employer's systems, which contained sensitive personnel information. The employer expected employees with access to this information to access it only when they had a business need for doing so. Additionally, the employer expected that employees with access to information relating to job applicants and hiring decisions would not disclose that information to individuals outside of the HR department.

(3) Claimant's transfer to the HR department occurred during the COVID-19 pandemic. As a result, she received somewhat limited formal training, mostly online, on the use of the HR department's systems. Despite this, the employer expected claimant to be competent in the use of their systems. As such,

[1] Decision # L0005900505 stated that claimant was denied benefits from August 11, 2024, to August 9, 2025. However, decision # L0005900505 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 16, 2024 (the Sunday of the week in which the decision concluded claimant had been discharged) and until she earned four times her weekly benefit amount. *See* ORS 657.176.

claimant often browsed various screens in the employer's systems in order to improve her competence with those systems.

(4) On July 10, 2024, claimant and a friend, her former coworker in the IT department, were chatting on the employer's Google chat channel about an internal job posting that the friend had interviewed for. During that chat, claimant disclosed to her friend that the latter was the only internal candidate being considered for the position, and that one of their mutual acquaintances was also being considered for the position. Claimant was not involved in the hiring process for that position, but had learned about the applicant pool because the position interested her and she was "curious," "[s]o [she] went looking for the… applicants" in the employer's systems. Transcript at 28. In the chat, claimant and her friend also discussed their former manager, and "said some negative things" about them." Transcript at 30.

(5) On July 23, 2024, the HR department received a report of an "alleged breach of confidentiality regarding an IT recruitment by an HR employee." Exhibit 1 at 4. The report indicated that claimant's friend in the IT department had been notified by the hiring manager that she had not been chosen for the position she had applied for, and that she responded by stating that she already knew because she had already been informed of this fact by someone in the HR department.

(6) On July 24, 2024, claimant met with her supervisor and a representative from the employer's employee and labor relations (ELR) department. During that meeting, claimant was asked if she was "aware of any disclosures of confidential information to an IT employee regarding a vacant position." Exhibit 1 at 4. Claimant denied that she was aware of any such disclosures. Shortly after the meeting, claimant spoke to the labor and relations employee again, and told her, "in full disclosure I looked up who applied but did not share the information." Exhibit 1 at 2–3. Also within minutes of the July 24, 2024, meeting, claimant called her friend in the IT department and, after the call, attempted to delete the chat messages between the two of them. The employer subsequently learned about claimant's attempt to delete the chat messages.

(7) On July 25, 2024, claimant again met with her supervisor and the ELR representative. At the beginning of the meeting, the ELR representative told claimant that they "expected her to be… cooperative, truthful, and to fully answer the questions that we asked as best as she could… and failure to be truthful could [result in] a separate action." Transcript at 18–19. During that meeting, claimant was initially asked if she had personally disclosed confidential information about the IT department recruitment with to a non-HR employee. Claimant first stated that she could not remember but, when the employer showed claimant the chats with her friend in the IT department, claimant admitted that she "may have told her that she was the only [internal candidate] in the applicant pool." Exhibit 1 at 5. Claimant also admitted that she "wanted to see who applied" for the position because she knew her friend had applied for it, and "did not have a business reason" for looking up the information but was "just curious." Exhibit 1 at 5. When asked why she attempted to delete the chat messages between herself and her friend in the IT department, claimant stated, "if you accessed them you know why; some things in there that should not have been said." Exhibit 1 at 5.

(8) On July 26, 2024, after having investigated the matter further, the employer placed claimant on paid administrative leave. On August 5, 2024, the employer notified claimant that she would be discharged on August 16, 2024, at the end of her period of paid administrative leave. On August 16, 2024, the employer discharged claimant for having accessed confidential information in the employer's systems

without having a business need for doing so, for disclosing that information to her friend in the IT department, and for being untruthful when the employer discussed the matter with claimant.

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). 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 having accessed confidential information in the employer's systems without having a business need for doing so, for disclosing that information to her friend in the IT department, and for being untruthful when the employer discussed the matter with claimant. As a preliminary matter, the order under review concluded that claimant's false or misleading statements to

the employer were not a proximate cause of the employer's decision to discharge claimant, explaining, "Although deleting these messages was a dishonest act, it did not lead employer to discharge claimant. Employer's witness stated that claimant was told dishonesty could result in a separate action. I am persuaded that claimant's dishonesty regarding this scenario was not a reason for her discharge even if employer may have pursued further disciplinary action based on dishonesty had claimant not been discharged." Order No. 24-UI-272597 at 5 n 1. The record does not support this conclusion.

Although the record shows the employer likely would not have discharged claimant if she had not either accessed the candidate pool information or disclosed that information to her friend, the employer's August 5, 2024, pre-dismissal letter to claimant stated:

> It is the District's conclusion that you purposely violated the Acceptable Use Policy, were dishonest in prior conversations and attempted to delete the evidence of your Google chat messages. In addition, you failed to follow the standards of confidentiality that is a core responsibility for HR employees, especially for those that routinely manage data and confidential information. Your actions have resulted in a loss of trust.

Exhibit 1 at 3. The concern over claimant's dishonesty was also raised in a July 26, 2024, pre-dismissal letter to claimant. *See* Exhibit 1 at 4–6. Additionally, the ELR representative told claimant at the start of their July 25, 2024, meeting that the employer expected claimant to be cooperative, truthful, and to answer the employer's questions to the best of her ability. As such, claimant's false or misleading statements to the employer must be considered when determining whether claimant's actions constituted misconduct.

The employer expected that HR department employees with access to confidential personnel information, as claimant had, would access it only when they had a business need for doing so. Additionally, the employer expected that employees with access to information relating to job applicants and hiring decisions would not disclose that information to individuals outside of the HR department. Claimant violated these expectations by looking up information about the IT department position for which her friend had applied when she had no business reason to do so (as she was not involved in that recruitment), and by disclosing the name of another candidate for that same recruitment to her friend who had applied for the job.

There is some dispute in the record as to whether claimant was aware of these expectations. At hearing, the employer's witness asserted that she believed that claimant would have been aware of these expectations "through her work in Human Resources," but did not know whether claimant had ever received a copy of a written policy codifying these expectations.[2] Claimant testified that she was not aware, when she did so on July 10, 2024, that disclosing the name of a job applicant to someone outside of the HR department was considered a breach of confidentiality. Transcript at 25. Claimant further explained that she was responsible for "entering data" and "wasn't involved in hiring," seemingly suggesting that she would not have had reason to learn policies or procedures around recruitment information. Transcript at 25.

[2] The record contains a copy of the employer's "Student and Staff Acceptable Use of District Technology Policy (AUP)." *See* Exhibit 1 at 7–16. However, that policy is broad, and does not specifically address the systems or types of information at issue in this case. As such, a discussion of the employer's expectations specifically regarding HR department systems and the information contained therein is more relevant to this analysis.

Claimant's explanation is unconvincing. Claimant worked in the employer's HR department for approximately three years before the events that led to her discharge. Given that confidentiality regarding personnel matters is such an important principle in human resources work, it is unlikely that claimant was not aware of the need for such confidentiality. Moreover, during the course of the employer's interview, claimant was dishonest or misleading, regarding the disclosures, on multiple occasions.

On July 24, 2024, during the first discussion with her supervisor and the ELR representative, claimant denied awareness of any disclosure of confidential information regarding the vacant position in IT, despite her knowledge that she had personally disclosed to her friend the identity of the other candidate. Following that discussion, claimant told the ELR representative that "in full disclosure" she had accessed information regarding who applied for the position but did not share the information. This was not a "full" disclosure, however, as claimant had in fact shared that information. On July 25, 2024, after initially stating that she did not remember if she had disclosed confidential information, she admitted that she "may have told [her friend in the IT department] that she was the only [internal candidate] in the applicant pool" once the employer showed claimant copies of her chats from July 10, 2024. Again, this was not a full disclosure of what had transpired, because claimant not only told her friend that the latter was the only internal candidate, but disclosed the name of one of the other candidates.

Additionally, shortly after the July 24, 2024, meeting, claimant attempted to delete the chats between her and her friend in the IT department. At hearing, claimant testified that she did so over concerns that negative comments she and her friend had made about their former manager in those chats could "get out" and cause trouble, but that she was "seriously not thinking" about the fact that she had disclosed the name of another applicant to her friend when she attempted to delete the chats. Transcript at 30–31. However, claimant attempted to delete the chats after calling her friend in the IT department, minutes after the July 24, 2024, meeting. The subject of the meeting that day had been the disclosure of confidential information about the job opening for which claimant's friend had applied, not negative statements made about a member of management. It is unlikely that claimant would have acted so quickly to attempt to conceal evidence tying her to the disclosure of confidential information if she was not concerned about the employer learning about it. Therefore, claimant's attempt to delete the chats was, more likely than not, at least partially motivated by her concern that she had violated the employer's expectations by disclosing information about the applicant pool to her friend.

When taken as a whole, claimant's attempt to obscure the fact that she had disclosed confidential information regarding the IT recruitment, shows that she likely was aware that the disclosure violated the employer's expectations regarding the confidentiality of said information. As such, because claimant was aware of those expectations, her decision to violate them was at least wantonly negligent.

Similarly, it can reasonably be inferred from the above—especially claimant's "full disclosure" statement after the meeting on July 24, 2024—that she was aware that she had violated the employer's expectations that she only access such information when she had a business need to do so. At hearing, claimant suggested that she *did* have a business need to do so, because she was "still learning the system" and how to use the employer's "complicated software." Transcript at 28. Claimant undercut this assertion, however, by explaining, "This position interested me. I was curious. So I went looking for the, um, applicants. It's a learning process. That's how I learn. Hands on." Transcript at 28. This statement

shows that claimant's decision to browse through the information pertaining to the IT recruitment was not merely an exercise in learning to use the software. Rather, she decided to do so to satisfy her own curiosity about the position. Claimant's curiosity about a job posting, and the candidates who had applied for that posting, did not constitute a business need. Claimant therefore violated the employer's expectations in that regard as well. Because claimant's "full disclosure" statement, above, indicated that she was aware that accessing this information without a business need was a violation of the employer's expectations, but did so without any apparent consideration for the consequences of doing so, she violated those expectations with at least wanton negligence.

Claimant's acts of dishonesty also were violations of the employer's standards of behavior. At the beginning of the July 25, 2024, meeting, the employer told claimant that they "expected her to be… cooperative, truthful, and to fully answer the questions that we asked as best as she could…". As noted above, claimant proceeded to give false or misleading answers during that meeting. The remainder of claimant's false or misleading statements or actions took place the prior day, on July 24, 2024, prior to the employer's having explicitly given her that expectation. Nevertheless, even without such a statement, claimant either knew or should have known that the employer expected her to be truthful while participating in an investigation into an unauthorized disclosure of confidential information, because any reasonable employer would have such an expectation. Therefore, claimant's various false or misleading statements and actions on July 24 and 25, 2024 were at least wantonly negligent violations of the employer's expectations that she be truthful and cooperative in the course of the investigation.

The above conduct cannot be excused as an isolated instance of poor judgment. Although all of these instances were broadly related, they were nevertheless at least three distinct actions. First, claimant accessed the recruitment information without a business need, apparently to satisfy her "curiosity" about the posting. Next, claimant disclosed some of this information to her friend who had applied for the position. Third, on multiple occasions, claimant gave false or misleading information, including an attempt to delete evidence, during the course of the employer's investigation. Because claimant's willful or wantonly negligent behavior included at least three separate instances of poor judgment within a short period of time, they constituted a pattern of willful or wantonly negligent behavior, and not a single or infrequent occurrence. As such, they were not isolated.

Finally, claimant's conduct cannot be considered an isolated instance of poor judgment because at least some of that conduct exceeded mere poor judgment. Under OAR 471-030-0038(1)(d)(D), acts that create irreparable breaches of trust in the employment relationship exceed mere poor judgment and are therefore not isolated instances of poor judgment. Here, claimant repeatedly gave false or misleading information to the employer in an attempt to obscure the fact that she had violated their expectations regarding the disclosure of confidential personnel information, even after the employer advised her that they expected her to be truthful and cooperate with the investigation. Under such circumstances, any reasonable employer would conclude that they could no longer trust claimant with such sensitive information, as the employer concluded here.

For the above reasons, claimant's discharge was for misconduct, and not an isolated instance of poor judgment. Claimant is disqualified from receiving unemployment insurance benefits effective August 11, 2024.

DECISION: Order No. 24-UI-272597 is set aside, as outlined above.

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

DATE of Service: December 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 stated above**. *See* ORS 657.282. For forms and information, visit https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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