

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0795**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 24, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective July 7, 2024 (decision # L0005264003).<sup>1</sup> Claimant filed a timely request for hearing. On October 24, 2024, ALJ Bender conducted a hearing, and on November 1, 2024, issued Order No. 24-UI-271798, reversing decision # L0005264003 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) Roseburg Landscape Maintenance, LLC employed claimant as a landscaping crew leader from August 7, 2019, through June 12, 2024. At claimant's request, the employer scheduled claimant to work only during weekends. Claimant typically worked ten to 12 hours per workday.

(2) The employer expected their landscapers to maintain their customers' properties "at the highest level, including... a weed free environment," ensuring that vegetation is trimmed as needed, that all leaves and trimmings are picked up, and that the environment is "safe... for any pedestrians that walk by[.]" Transcript at 10. Claimant understood these expectations.

(3) The employer would typically assign a crew leader and one or two other crew members to work any given job. However, the employer had a difficult time finding other employees who could work on the weekends. As a result, claimant often performed jobs alone. For instance, claimant worked without any additional crew members on the jobs he performed from approximately September 2023 through March

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<sup>1</sup> Decision # L0005264003 stated that claimant was denied benefits from June 16, 2024, to June 14, 2025. However, decision # L0005264003 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 7, 2024 (the Sunday of the week in which the decision concluded he had been discharged) and until he earned four times his weekly benefit amount. See ORS 657.176.

2024. Working without additional crew members often caused claimant to be unable to perform all of the work that was expected of him on a job, as the employer tended to schedule him for significantly more work than he could complete by himself on any given day.

(4) Because claimant was often unable to complete the amount of work that a given job required, due to short staffing on weekends, the employer began receiving complaints about the quality of claimant's work. The employer lost about half of the customers claimant serviced because of quality issues. Claimant and the employer spoke about this on several occasions, and claimant explained to the employer each time that his poor work performance was the result of having more work than he could perform by himself. The employer's response, each time, was to remind claimant that it was difficult for them to find people who would work on weekends.

(5) On or shortly after May 24, 2024, the employer received a complaint from one of their customers, a large grocery store, about the quality of work that claimant and a coworker completed at their premises that day. The poor work quality was the result of claimant and the other employee not having had enough time to complete all the tasks necessary for the job. Based on this complaint, the employer was concerned that they would lose more customers.

(6) On June 12, 2024, the employer discharged claimant because of the complaints they were receiving about claimant's work quality, and their resulting concern that they would continue to lose customers.

**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 they received complaints that claimant's landscaping work was of poor quality, leading to the loss of customers and the employer's concern that they risked losing additional customers if they continued to employ claimant. The employer expected claimant to maintain their customers' properties "at the highest level, including... a weed free environment," ensuring that vegetation is trimmed as needed, that all leaves and trimmings are picked up, and that the environment is "safe... for any pedestrians that walk by[.]" Claimant was aware of these expectations. However, claimant's work fell short of these expectations because he, either working alone or with another employee, was unable to complete the amount of work necessary to meet this standard of quality in the time allotted by the employer. The employer did not rebut claimant's assertions on this point, but simply explained that they had a difficult time finding other employees who could work during the weekends when claimant was scheduled to work.

The employer did not assert, and the record does not otherwise show, that claimant's failure to meet the employer's expectations was the result of anything other than an inability to complete the amount of work that was assigned to him. The record does not show, for instance, that claimant did not take his duties seriously, or that he was purposefully not performing the work assigned to him. Therefore, the employer has not met their burden to show that claimant's continued failure to meet their expectations was due to his having willfully, or with wanton negligence, violated their standards of behavior. As such, claimant was discharged, but not for misconduct

For the above 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-271798 is affirmed.

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

**DATE of Service:** December 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 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.

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