

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0832**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0004431530). The employer filed a timely request for hearing. On November 22, 2024, ALJ Hall conducted a hearing and issued Order No. 24-UI-274410, affirming decision # L0004431530. On December 6, 2024, the employer filed an application for review of Order No. 24-UI-274410 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Lowe's Home Centers, LLC employed claimant from February 8, 2009, until May 8, 2024. For approximately the final 18 months of his employment, claimant worked as a district asset protection manager.

(2) Claimant's job responsibilities included coordinating with the management and staff of nine stores within his district to ensure physical security and theft prevention, inventory control, and the prevention of industrial accidents. The employer expected the stores within the district to meet certain metrics in these areas. Claimant understood this expectation.

(3) When claimant was promoted to district asset protection manager, he was sent to another district for a short time to shadow the person holding the position there. Claimant did not find this experience valuable in learning how to best perform his job duties and felt that his training was generally insufficient.

(4) On August 3, 2023, the employer warned claimant that the stores within his district were failing to meet the loss prevention metrics set by the employer and directed him to improve the stores' performance. On November 3, 2023, the employer issued a similar warning. On January 19, 2024, the employer issued a final warning for the same reasons.

(5) After each warning, claimant contacted the management teams at each store, conducted store visits, and took other actions to try to improve the stores' loss prevention metrics.

(6) On February 5, 2024, claimant began a protected leave of absence. While on leave, the employer decided to discharge claimant due to the stores in his district continually failing to meet loss prevention metrics.

(7) On May 8, 2024, claimant returned from his leave of absence as scheduled. On that day, the employer discharged claimant, and he did not work for them 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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

Claimant was discharged because the stores in his district failed to meet loss prevention metrics set by the employer. To the extent the employer expected their district asset protection managers to do everything known to them to enable the stores to meet these metrics, this was a reasonable expectation. Claimant understood the employer's expectation in that regard.

Claimant received three warnings between November 3, 2023, and January 19, 2024 for stores in his district failing to meet loss prevention metrics. Despite these warnings, the loss prevention metrics did not improve, leading to the employer's decision to discharge claimant upon his return from a protected leave of absence. The employer's witness suggested that the stores' poor performance was due to claimant failing to "follow up with training inside of the stores" and that there was a "lack of engagement" with store personnel. Transcript at 12.

In contrast, claimant testified that he "[took] the notes that [he] received from [his] supervisor. Went directly to the [poorly performing stores]. Had meetings with the department managers, store managers, and assistant managers along with the [district manager] at the time and area [human resources]." Transcript at 20. Claimant further testified that during these meetings, he "would actually physically walk these areas and give direction on what needs to be actually done" including "good physical security" and "product protection" inside and outside the building. Transcript at 20. Claimant also described his efforts in improving inventory control and assisting in theft prosecutions. Transcript at 21-22. Claimant suggested that the stores in his district failed to meet the metrics despite these actions

because he “[had] to rely on the store management team to follow up and follow the directions . . . and training [he had] given.” Transcript at 20. Claimant also cited a lack of “follow-up” at the district level and denied that his district supervisors told him that his plans for improving the metrics were inadequate. Transcript at 23. Claimant testified that the feedback he received from the district level was that he had “put too much into it” and “sent too many emails about [inventory] counts and safety.” Transcript at 23. Further, claimant described his only training for the position as a brief period shadowing another employee that he told his supervisor at the time was “not worth it.” Transcript at 25-26.

Given claimant’s rebuttal to the employer’s testimony, the record fails to show by a preponderance of the evidence that claimant willfully or with wanton negligence failed to take any action that he knew or should have known that the employer expected of him, particularly between the January 19, 2024, final warning and the beginning of his leave of absence on February 5, 2024. To the extent the failure of the stores in claimant’s district to meet loss prevention metrics was attributable to the inefficiency of claimant’s individual efforts, rather than those of the staff at those stores, the employer has not met their burden of showing that this was not due to a lack of job skills or experience. Accordingly, the employer’s decision to discharge claimant during his protected leave of absence was not the result of misconduct.

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-274410 is affirmed.

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

**DATE of Service:** January 3, 2025

**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 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، می توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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