

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0839**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 7, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective July 14, 2024 (decision # L0005477655).<sup>1</sup> Claimant filed a timely request for hearing. On November 19, 2024, ALJ Micheletti conducted a hearing, and on November 22, 2024, issued Order No. 24-UI-274237, modifying decision # L0005477655 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective July 7, 2024. On December 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) IQ Credit Union employed claimant as an assistant branch manager from July 21, 2022, until July 12, 2024.

(2) The employer expected that their employees would not access customer account information without a business purpose for doing so. This policy was stated in the employee handbook, which claimant acknowledged receiving at hire and in January of each subsequent year. Claimant was also responsible for enforcing the policy with employees whom she supervised.

(3) From November 7, 2023, through January 4, 2024, claimant accessed a customer's account 21 times, including at least 20 times when claimant knew she did not have a business purpose for doing so. A romantic relationship developed between claimant and the customer in January 2024 and claimant stopped accessing the account at that time.

(4) On July 11, 2024, the employer received an anonymous customer complaint that claimant had accessed the account at issue without a business purpose. The employer investigated and discovered claimant's history of accessing the account without any apparent business purpose.

<sup>1</sup> Decision # L0005477655 stated that claimant was denied benefits from July 14, 2024 to July 12, 2024. However, decision # L0005477655 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 14, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

(5) On July 12, 2024, the employer discharged claimant for having accessed the customer's account without a business purpose. Claimant admitted that she had accessed it on each occasion to view the customer's phone number for personal reasons, except for the first occasion which she believed had a business purpose.

**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 because she repeatedly accessed a customer's account information without a business purpose. The employer reasonably expected that their employees would not access customer accounts without a business purpose, and claimant understood this expectation.

Claimant admitted to accessing the account at issue 21 times over a two-month period. Claimant testified that she initially accessed the account because the customer had not visited the credit union "in a short period of time" and the customer's father mentioned to her that the customer had suffered an injury at his job. Audio Record at 13:51. Claimant explained that she accessed the customer's phone number in the employer's files and called him to "ask if he was okay." Audio Record at 14:00. Claimant asserted that she continued to access the customer's account only to look up his phone number and make personal calls to him using the employer's phone in claimant's office, after he messaged claimant on social media requesting that she call. Audio Record at 15:00. Claimant testified she "never really thought [accessing the account] would be an issue" and "never would have gotten his phone number that way" if she had thought it would "not be in compliance with [her] job." Audio Record at 16:05.

Even if claimant's initial reason for accessing the customer's account could be viewed as having a business purpose as a goodwill gesture benefitting the employer, claimant did not suggest that her reasons for accessing the account the 20 subsequent times were other than strictly personal. Claimant believed at the time that since she had initially obtained the phone number for what she perceived as a business reason, accessing it again thereafter for personal reasons was not "unethical or against company policy." Audio Record at 20:30. Claimant thought repeatedly accessing the phone number through the employer's files was more "ethical" and consistent with the employer's policies than recording the phone number elsewhere for her personal use. Audio Record at 20:45. However, this explanation does not support that claimant ever had reason to believe that accessing the customer's account after the first instance served a business purpose. Therefore, accessing the account was in violation of the employer's policy.

Claimant acted consciously in accessing the customer's account on each occasion and, with regard to at least 20 of the 21 occasions, demonstrated indifference to the consequences of her actions and knew or should have known that her conduct would likely result in a violation of the employer's policy against accessing accounts without a business purpose. Accordingly, claimant violated the policy with at least wanton negligence on these occasions.

Further, claimant's conduct cannot be excused as an isolated instance of poor judgment. While claimant's actions evinced poor judgment, they cannot be considered "a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior," given that claimant engaged in this conduct on at least 20 separate occasions over a two-month period. Therefore, claimant was discharged for misconduct that cannot be excused as an isolated instance of poor judgment.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective July 7, 2024.

**DECISION:** Order No. 24-UI-274237 is affirmed.

D. Hettle and A. Steger-Bentz;  
S. Serres, 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، می‌توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**

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