

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0020

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 19, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving unemployment insurance benefits effective November 3, 2024 (decision # L0007269561).¹ Claimant filed a timely request for hearing. On December 20, 2024, ALJ Micheletti conducted a hearing, and on December 27, 2024, issued Order No. 24-UI-278164, affirming decision # L0007269561. On January 8, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT AND EVIDENTIARY MATTER: Claimant submitted a written argument on January 9, 2025. EAB did not consider claimant's January 9, 2025, written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Claimant also submitted a written argument on January 13, 2025. Claimant's January 13, 2025, argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision, except for EAB Exhibit 1, discussed below. EAB considered claimant's January 13, 2025, argument to the extent it was based on the record.

At hearing, the employer offered, and the ALJ admitted into evidence, documents consisting of a performance improvement plan, a formal written warning, and a final warning, which the employer respectively gave to claimant on October 11, October 15, and October 22, 2024. *See Exhibit 1; see also*

¹ Decision # L0007269561 stated that claimant was denied benefits from November 3, 2024 to November 1, 2025. However, decision # L0007269561 should have stated that claimant was disqualified from receiving benefits beginning Sunday, November 3, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

Transcript at 58. Claimant objected to admission of the documents asserting that they were incomplete because they lacked written comments claimant made in response to the written warning and the final warning. Transcript at 57-58. The employer did not dispute that the documents they offered lacked claimant's written responses. Transcript at 58. The ALJ admitted the documents into the hearing record "with a caveat that they are incomplete." Transcript at 58.

As part of her January 13, 2025, argument, claimant attached approximately 100 pages of documents, some of which were duplicates. Among those documents are claimant's written responses to the October 15, 2024, formal written warning and the October 22, 2024, final warning, which total four pages. Pursuant to OAR 471-041-0090(1)(a), EAB is receiving these four pages into the record as necessary to complete the record. The four pages have been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) On Track Inc. employed claimant as a payroll administrator from August 8, 2022, until November 4, 2024.

(2) The employer prohibited their employees from communicating in a hostile or aggressive manner with coworkers. Claimant understood this expectation.

(3) Prior to September 2024, claimant worked as peers with the employer's other payroll administrator at the time. In early September 2024, the other payroll administrator was promoted to the position of finance controller, which made her claimant's supervisor. The employer hired a new employee to fill the vacant payroll administrator position. Claimant was the new payroll administrator's trainer.

(4) After the controller began supervising claimant, conflicts emerged between the two. The controller took issue with aspects of claimant's performance, such as how she trained the new payroll administrator, and considered claimant's communications to be rude and disruptive at times.

(5) On October 11, 2024, the employer gave claimant a performance improvement plan. On October 15, 2024, the employer gave claimant a formal written warning, and on October 22, 2024, the employer gave claimant a final warning. The plan and warnings pointed out the aspects of claimant's performance and communication style with which the controller was dissatisfied.

(6) On October 31, 2024, the employer believed that claimant approached the controller with "a very aggressive attitude and behavior" when the controller tried to correct claimant about "a process or procedure" that the controller felt claimant should have known about. Transcript at 10.

(7) The employer regarded claimant's alleged conduct on October 31, 2024, to be a breach of their policy prohibiting employees from communicating in a hostile or aggressive manner with coworkers. On November 4, 2024, the employer discharged claimant for her alleged conduct on October 31, 2024.

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 order under review concluded that the employer discharged claimant for misconduct. Order No. 24-UI-278164 at 3. In particular, the order concluded that claimant wantonly negligently violated the employer’s prohibition on communicating in a hostile manner during the interaction between claimant and the controller that allegedly occurred on October 31, 2024. Order No. 24-UI-278164 at 3. The record does not support the conclusion that claimant violated the employer’s expectations with wanton negligence on October 31, 2024.

At hearing, the witnesses for the employer testified that claimant’s interaction with the controller on October 31, 2024, was the incident that caused the employer to discharge claimant on November 4, 2024. Transcript at 5-6, 8-9. Therefore, claimant’s interaction with the controller on October 31, 2024, was the proximate cause of the discharge and focus of the analysis. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

The employer failed to meet their burden to establish that claimant, willfully or with wanton negligence, violated their prohibition on communicating in a hostile manner on October 31, 2024. At hearing, the employer offered testimony from their human resources (HR) director, their director of business operations, and the new payroll administrator. The employer did not present the controller as a witness.

Neither the HR director nor the director of business operations were present for the October 31, 2024, incident. Transcript at 6, 9. The HR director offered no testimony about the incident. The director of business operations offered testimony based on what the controller had told him had occurred. This hearsay account was vague and lacking in detail. Transcript at 10-11. Per this account, on October 31, 2024, claimant approached the controller with “a very aggressive attitude and behavior” when the controller tried to correct claimant about “a process or procedure” that the controller felt claimant should have known about. Transcript at 10. The director of business operations testified that the controller felt that claimant’s “tone of voice, the tenor, and aggressiveness was inappropriate[.]” Transcript at 10.

The new payroll administrator was not present in the office where the alleged incident between claimant and the controller occurred. However, he testified that he “vaguely” recalled overhearing an interaction between the two through the controller’s closed office door on October 31, 2024. Transcript at 40. The new payroll administrator stated that he heard claimant “elevating her voice and talking over [the

controller], when [the controller] was trying to . . . discuss things with her.” Transcript at 40. The payroll administrator did not remember what the two were discussing, and conceded that claimant had a relatively loud voice normally, though he thought what he heard through the wall was “elevated higher than her normal . . . speech patterns.” Transcript at 41.

For her part, claimant denied communicating with the controller in a hostile or aggressive manner on October 31, 2024, and testified that she did not recall any particular incident with the controller on that day. Transcript at 35, 50, 54.

Weighing this evidence, the employer’s hearsay evidence of what the controller was purported to have told the director of business operations and firsthand evidence of what the new payroll administrator heard through a closed door, which was lacking in detail and rebutted by claimant’s steadfast denial, is not sufficient to meet the employer’s burden to prove that claimant violated their expectations willfully or with wanton negligence on October 31, 2024. Accordingly, claimant was discharged, but not for misconduct, and is therefore not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-278164 is set aside, as outlined above.

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

DATE of Service: February 11, 2025

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

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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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