

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0021

Affirmed
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On August 30, 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 as a result of the work separation (decision # L0005874846). The employer filed a timely request for hearing. On October 11, 2024, notice was mailed to the parties that a hearing was scheduled for October 25, 2024. Prior to October 25, 2024, the hearing was rescheduled to November 5, 2024. On November 5, 2024, ALJ Micheletti conducted a hearing at which claimant failed to appear, and on November 12, 2024, issued Order No. 24-UI-272958, reversing decision # L0005874846 by concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective March 31, 2024. On November 22, 2024, claimant filed a timely request to reopen the November 5, 2024, hearing. On December 30, 2024, ALJ Micheletti conducted a hearing, and on January 6, 2025, issued Order No. 25-UI-278848, allowing claimant's request to reopen, cancelling Order No. 24-UI-272958, and affirming decision # L0005874846 on the merits by concluding that claimant was discharged, but not for misconduct. On January 9, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Gee Automotive Tpc, LLC employed claimant as a cashier at their auto parts business from September 25, 2023, through April 4, 2024.

(2) The employer expected that their employees would speak about other employees respectfully. Claimant was aware of this expectation.

(3) Claimant had a contentious relationship with her supervisor, A. Among other issues, A. believed that claimant failed to follow processes as instructed, preferring instead to do things her own way, which resulted in mistakes. A. also believed that claimant would say negative things about her to other employees. Claimant believed that A. was "extremely dismissive" toward her, denied her training opportunities afforded to other employees, communicated with her differently than other employees, and

would give confusing or conflicting instructions that would result in claimant making mistakes. December 30, 2024, Transcript at 28-29. At various times throughout claimant's employment, claimant made complaints to human resources against A. regarding these issues, and claimant received warnings from A. and human resources for the conduct they perceived her to have engaged in.

(4) On March 11, 2024, A. and the human resources coordinator warned claimant for failing to follow processes as directed by A., which they believed resulted in mistakes. In that warning, claimant was also told that her coworkers had reported that claimant was "continuously" referring to A. as "a bitch" whenever A. was not present, and that such conduct "cannot continue." December 30, 2024, Transcript at 12.

(5) In mid-March 2024, a new employee, T., began working in claimant's department. T. reported to A. and the employer's human resources coordinator that on March 29, 2024, claimant told T. that A. "was unable to drive a car because [A's] license was fucked up, insinuating [A.] had some sort of criminal background," and that claimant said, "[T]he office was full of fucking liberals and especially [A.], who's a five-star liberal." December 30, 2024, Transcript at 11. T. further reported that claimant "made statements regarding her political and personal views toward" the employer's transgender employees, which included "[not] wanting to work with those people." December 30, 2024, Transcript at 11.

(6) The employer interviewed claimant in response to T's reports, and claimant denied having made any of the statements. Because T.'s account was similar in nature to reports made on several occasions throughout claimant's employment by other employees, the employer believed T.'s version of events.

(7) On April 4, 2024, the employer discharged claimant because of the statements she allegedly made to T. on March 29, 2024.

(8) On October 11, 2024, the Office of Administrative Hearings (OAH) mailed notice to claimant that a hearing was scheduled for October 25, 2024. Claimant received the notice shortly thereafter. On October 21, 2024, claimant telephoned OAH to request a postponement of the hearing so that she could have additional time to prepare. The hearing was postponed until November 5, 2024, and notice of this was given to the employer. However, claimant was not told during the October 21, 2024, phone call that her request had been granted, and she was instead instructed to appear on October 25, 2024, as stated in the notice of hearing, to learn the results of her postponement request. A written notice of the changed hearing date was not mailed to claimant.

(9) On October 25, 2024, claimant attempted to appear for the hearing as instructed by the notice and the OAH representative, but no hearing was convened that day because it had been postponed. Claimant was unaware of the postponement and therefore failed to appear at the November 5, 2024, hearing.

(10) On November 12, 2024, Order No. 24-UI-272958 was mailed to claimant following the November 5, 2024, hearing.

(11) On November 22, 2024, claimant filed a request to reopen the November 5, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Claimant was discharged, but not for misconduct

Request to reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant filed a request to reopen on November 22, 2024, within 20 days of the date Order No. 24-UI-272958 was mailed, and included in her request an explanation for missing the hearing. Therefore, claimant’s request met the threshold requirements for consideration.

The ALJ took notice of OAH’s records, which stated that on October 21, 2024, claimant called and asked for a postponement of the October 25, 2024, hearing, and that the ALJ granted the request. December 30, 2024, Transcript at 6. Claimant testified that instead of being told that the hearing had been postponed to November 5, 2024, she was told to appear as originally scheduled to see whether the ALJ would grant her request at that time. December 30, 2024, Transcript at 7. That the record does not contain a written notice of hearing for November 5, 2024, and that the employer nonetheless appeared at that hearing, suggests that OAH notified the employer of the change in hearing date by means other than mail, but failed to notify claimant of the change. This was a factor beyond claimant’s control that prevented her appearance at the hearing. Accordingly, claimant has shown good cause to reopen the November 5, 2024, hearing, and her request to reopen is allowed.

Discharge. 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 believed that on March 29, 2024, claimant made negative comments about A. to a coworker using foul language. Claimant asserted that the employer told her that she was being discharged “because [she] made too many mistakes.” December 30, 2024, Transcript at 30. The human resources coordinator who informed claimant of her discharge rebutted this testimony, stating that he told claimant she was being discharged for her comments about A. and explained to claimant why he found claimant’s coworkers’ accounts regarding those comments more credible than claimant’s denials. December 30, 2024, Transcript at 34. He further testified, “[I]t’s possible I brought up the errors, but I don’t even think so.” December 30, 2024, Transcript at 34. The timing of events supports the employer’s testimony, in that claimant was discharged on April 4, 2024,

for an event alleged to have occurred on March 29, 2024, while claimant had been warned, primarily about making mistakes, on March 11, 2024, and the record does not show evidence of specific mistakes made after that warning. Therefore, more likely than not, claimant's alleged statements to T. about A. on March 29, 2024, were the proximate cause of claimant's discharge.

The employer reasonably expected that their employees would not speak disrespectfully of others. Claimant was aware of this expectation. Both A. and the employer's human resources coordinator testified at hearing. Both of the employer's witnesses asserted that T. told them that on March 29, 2024, claimant made derogatory and insulting remarks about A. using foul language. The human resources coordinator also testified that when confronted with T.'s allegation, claimant denied making any such remarks.

In contrast, claimant testified that she "disagreed with all" of T.'s account, as given at hearing by A. and the human resources coordinator. December 30, 2024, Transcript at 25. Claimant further testified that she believed T. to be "a friend of [A's]" and that claimant and T. "rarely [had] anything to speak about." December 30, 2024, Transcript at 6. Claimant denied discussing with coworkers the topics of "politics. . . religion. . . personal life, finances, [and] things like this," and specifically denied ever referring to A. as a "bitch" or "five-star liberal." December 30, 2024, Transcript at 25-26.

In weighing these contrasting accounts, claimant's first-hand testimony is entitled to greater weight than T.'s hearsay account, and the facts have been found accordingly. Therefore, the employer has not met their burden to show by a preponderance of the evidence that claimant made the remarks as T. alleged. Accordingly, the employer has not shown that on March 29, 2024, claimant willfully or with wanton negligence violated the employer's policies. Claimant was therefore not discharged for misconduct.

For these reasons, claimant's request to reopen the November 5, 2024, hearing is allowed. Claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-278848 is affirmed.

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

DATE of Service: February 11, 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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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

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.

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