

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0022

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 19, 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 October 27, 2024 (decision # L0007333980).¹ Claimant filed a timely request for hearing. On December 17, 2024, ALJ Lucas conducted a hearing, and on December 18, 2024, issued Order No. 24-UI-277202, reversing decision # L0007333980 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On January 6, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Coos Bay Hospitality, Inc. employed claimant as a maintenance worker at their hotel from March 11, 2024, through October 4, 2024.

(2) The employer expected that their employees would follow managers' directions and would treat others respectfully. Claimant understood these expectations.

(3) On October 4, 2024, shortly before 5:00 p.m., a vehicle collided with the hotel, causing damage to a room. Claimant went outside the hotel to view the collision site. Law enforcement and firefighters arrived shortly thereafter. Under the emergency responders' direction, claimant assisted the driver involved in the collision. While claimant was doing this, the hotel's office manager approached claimant and told him something that claimant didn't understand due to a language barrier. The office manager then went back into the hotel.

(4) Shortly thereafter, the hotel's general manager arrived and made contact with claimant. Claimant asked the general manager what he wanted claimant to do, and he replied, "Oh, just see what's going

¹ Decision # L0007333980 stated that claimant was denied benefits from October 27, 2024, to October 25, 2025. However, decision # L0007333980 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 27, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

on.” Transcript at 18. Claimant assisted with “crowd control” and communicating with the manager and power company regarding shutting off electricity to the building. Transcript at 18.

(5) At approximately 5:45 p.m., claimant intended to enter the hotel to clock out for the day. As claimant opened the door to the lobby, the office manager stood in the doorway, “got right in [claimant’s] face,” and said, “Time to go fucking home.” Transcript at 18-19. Claimant objected to her use of foul language, but she continued to repeat the same statement. Claimant yelled to the general manager, who was in the lobby, to come defuse the situation. The general manager came over, also “[got] in [claimant’s] face,” and told claimant to “go F home and get out of here before you get fired.” Audio Record at 30:48. Claimant complained to him about the office manager’s behavior, but the general manager “didn’t care to listen[.]” Transcript at 21. Claimant did not touch either manager or raise his voice, except to call the general manager over. Claimant then left the hotel for the day without clocking out.

(6) The office manager and general manager believed that they had communicated to claimant shortly after the collision that he should clock out and go home, and that he should not go to the collision site or enter the area of the hotel that was damaged. They also believed that claimant was responsible for what they considered a “physical clash” with the office manager in the lobby doorway. Transcript at 5. The managers reported their version of events to the hotel’s owner, who then reviewed surveillance video. The owner believed that the video, which did not contain audio, showed that claimant “[kept] going in the [damaged] room” and was “interrupting” police and firefighters at the collision site. Transcript at 10-11.

(7) Later on October 4, 2024, the employer discharged claimant for disregarding the managers’ instructions that he go home and stay away from the damaged room and collision site, and for engaging in a “[p]hysical and verbal” fight with the office manager in the lobby doorway. Transcript at 5.

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 believed that claimant had disregarded the managers’ instructions and instigated a physical and verbal fight with the office manager. The employer reasonably expected that their employees would follow managers’ instructions and would treat others respectfully. Claimant understood these expectations. The parties gave conflicting accounts of the events of October 4, 2024, which led the employer to discharge claimant.

The owner, who was not present for these events, testified that the general manager and office manager told him that they had instructed claimant several times, beginning immediately following the collision, to clock out for the day and to not enter the damaged room or collision site. Transcript at 11. They also each reported that claimant instigated an argument while face-to-face with the office manager, that the general manager then told claimant to “disengage, do not fight,” and that claimant would be discharged if he did not stop at that moment, but that claimant “stubbornly still engag[ed] with [the office manager].” Transcript at 7-8. The owner also testified, “I can see in the camera, [claimant] keeps going in the room and they are telling him not to go in the room because the building just got hit. There are police working. There are firefighters working. And he was going, interrupting them.” Transcript at 10-11. The owner implied that the video footage did not contain audio by testifying, “I cannot hear” with regard to viewing the footage. Transcript at 24.

In contrast, claimant testified that, upon learning of the collision, he went outside the hotel. Once outside, claimant recognized the driver of the vehicle involved in the collision and was asked by law enforcement to “help out.” Transcript at 17. Claimant assisted the driver for several minutes, at which point the office manager came up and “[told] me something I didn’t really understand because she is bilingual. . . [s]o it’s kind of hard translation-wise to catch on to what she’s talking about. Then she [went] back to the office.” Transcript at 17-18. Claimant then asked the general manager what he wanted claimant to do, to which the general manager responded, “Oh, just see what’s going on.” Transcript at 18.

Claimant testified that he was then working on “crowd control” when the office manager came out again, that she left after claimant gave her an update, and that he then spoke with the general manager about the power company needing to shut off the electricity. Transcript at 18. After the electricity was shut off, claimant attempted to enter the hotel lobby to clock out for the day, but was blocked by the office manager, who repeatedly used foul language to tell claimant to go home. Transcript at 18-19. Claimant testified that he called for the general manager to come over to help him, but when the general manager got there, he also “[got in] my face” and repeated the same things that the office manager had said. Transcript at 19. In response, claimant agreed to go home and left without clocking out. Claimant denied that he made physical contact with either manager. Transcript at 20.

To the extent that the owner’s account was based on information relayed to him from the managers, rather than what the owner personally witnessed in the video footage, and the account conflicted with claimant’s, claimant’s first-hand account is entitled to greater weight than the hearsay accounts, and the facts have been found accordingly. Further, to the extent that the owner’s testimony was based on what he saw in the video footage, and it conflicted with claimant’s testimony, the evidence is no more than equally balanced. As such, the employer failed to meet their burden of proof by a preponderance of evidence, and the facts have been found according to claimant’s account.

Therefore, the record shows that claimant was unaware of any manager’s instruction to clock out or avoid the damaged part of the hotel or the collision site prior to the encounter in the lobby doorway. Further, the record shows that claimant was not the aggressor in the conflict with the office manager, did not use physical force against anyone, and raised his voice only to seek help from the general manager (who engaged in the same aggressive conduct toward him as the office manager). Accordingly, the employer has not shown that claimant willfully or with wanton negligence violated their reasonable expectations and has therefore not shown that claimant was discharged for 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-277202 is affirmed.

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

DATE of Service: February 5, 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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