

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0028

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 15, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving benefits beginning October 20, 2024 (decision # L0007282100).¹ Claimant filed a timely request for hearing. On December 20, 2024, ALJ Schmidt conducted a hearing, and on December 27, 2024, issued Order No. 24-UI-278155, affirming decision # L0007282100. On January 10, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Wells Fargo Bank NA employed claimant at one of their branches, most recently as an associate manager, from March 31, 2008, until October 22, 2024.

(2) The employer prohibited employees from engaging in unprofessional conduct in the workplace, including behavior that creates “an offensive work environment” or involves use of “[o]bscene language or repeated use of profanity[.]” Exhibit 1 at 5. This policy was contained in the employer’s employee handbook, which claimant acknowledged receiving most recently in August 2021.

(3) In September 2024, claimant had an E. coli infection that caused her to take a medical leave of absence and miss several weeks of work. Claimant filed a Paid Leave Oregon claim to receive benefits for the weeks of missed work. Previously, the employer’s paid medical leave was administered by a private insurance company that, in claimant’s experience, released payments quickly. By contrast, claimant found that Paid Leave Oregon, which was administered by the Department, was much slower to release payments. Claimant had “a lot of bills that were backing up,” and some of her creditors were

¹ Decision # L0007282100 stated that claimant was denied benefits from October 20, 2024 to October 18, 2025. However, decision # L0007282100 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 20, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

threatening to “send [her] to collections.” Transcript at 25. The situation caused claimant to become “really frustrated and overwhelmed.” Transcript at 25.

(4) On the morning of October 9, 2024, claimant and her supervisor, the bank’s branch manager, arrived at the bank at 8:00 a.m. Claimant went to prepare the teller stations for the bank’s opening. The branch manager was working in the bank’s conference room, with the door to the conference room closed. No other employees were at the bank, and the bank did not open to customers until 9:00 a.m.

(5) At 8:36 a.m., claimant received a call on her cell phone from the Department about her Paid Leave Oregon claim. Claimant was alone at a teller station when she received the call, with the manager still in the conference room behind a closed door. The branch manager had previously given claimant permission to accept a call at work if she received one about her Paid Leave Oregon claim. Claimant took the call.

(6) During the call, a representative advised that the doctor’s note claimant had previously submitted to verify her claim was invalid. The representative told claimant that she needed to submit a new doctor’s note and that she had only 48 hours to do so. Claimant responded to the representative in a loud voice and said “a couple curse words.” Transcript at 25. At about 8:45 a.m., as claimant’s call with the representative was almost over, one of the bank’s tellers arrived for work and overheard claimant use some foul language in a loud voice. Claimant concluded the call at 8:46 a.m.

(7) The branch manager thought she heard yelling from outside the conference room. She came out of the conference room and approached claimant. Claimant was upset and crying and stated to the manager, “[T]his is why [I] should have killed [my]self.” Transcript at 14.

(8) The branch manager became concerned for claimant’s wellbeing and brought her into the conference room. In the conference room, claimant calmed down, and then made calls attempting to obtain a new doctor’s note. After about two hours, the employer sent claimant home for the rest of the day with pay.

(9) The employer decided that claimant’s conduct on October 9, 2024, violated the employer’s prohibition on unprofessional conduct and warranted discharge. On October 22, 2024, the employer discharged claimant for her conduct on October 9, 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 claimant violated the employer's expectations with wanton negligence during the final incident on October 9, 2024. Order No. 24-UI-278155 at 3. The record does not support this conclusion.

At hearing, the witness for the employer testified that the October 9, 2024, incident was the final incident leading to claimant's discharge. Transcript at 14. The October 9, 2024, incident therefore was the proximate cause of the discharge and is the focus of the discharge 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 prove that claimant's discharge was for misconduct.

As an initial matter, it is necessary to assess whether claimant's actions on October 9, 2024, violated the employer's policy prohibiting unprofessional conduct in the workplace. Only if claimant's conduct actually ran afoul of the employer's policy would it be necessary to assess whether such alleged violation was willful or wantonly negligent. The policy, a copy of which claimant received from the employer most recently in August 2021, prohibits behavior that creates "an offensive work environment" or involves use of "[o]bscene language or repeated use of profanity[.]" Exhibit 1 at 5. At hearing, claimant asserted that she did not violate the policy because she was alone during the call, but that if a teller had been present to overhear her yell and curse, it would have been a violation. Transcript at 27-28.

The record supports claimant's assertion that she was alone during the call, to an extent. The call began at 8:36 a.m. when claimant was alone at a teller station and the only other employee, the manager, was away behind a closed door in the conference room. However, claimant conceded at hearing that a teller arrived at the bank at 8:45 a.m. and that her call continued until 8:46 a.m., meaning that the teller was present "for a couple minutes hearing the end of [claimant's] phone call." Transcript at 25. Claimant further conceded that she used a loud voice and said "a couple curse words" during the call. Transcript at 25, 38. The employer offered the testimony of the manager who testified that when she came out of the conference room, claimant was screaming, saying the word "fuck," and that other employees were present in the bank and uncomfortable. Transcript at 12. Given this mix of evidence, the preponderance favors that claimant used some foul language in a loud voice during the call, and a teller overheard her doing so. Claimant's conduct violated the employer's expectation.

However, the employer failed to meet their burden to prove that claimant's violation was willful or wantonly negligent. Claimant's violation was not willful because she did not deliberately violate the employer's expectations. Claimant's violation was also not wantonly negligent. Claimant should have known that her conduct probably violated the employer's expectations, given the employer's un rebutted evidence that claimant received a copy of the policy most recently in August 2021, coupled with claimant's admission that if a teller overheard her yell and curse, it would be a violation. Transcript at 18, 28. However, numerous facts support that claimant was *not* acting with indifference to the consequences of her actions. Claimant took the call with permission from the manager, while the manager was away in a conference room behind a closed door. The bank was not open during the call and no customers were present. For the vast majority of the call, claimant was alone, with a teller arriving at the bank to overhear only the last couple minutes of the call.

There also is reason to conclude that claimant was not conscious of her conduct of using foul language in a loud voice during the call. Claimant was in financial distress at the time she received the call, in need of Paid Leave Oregon benefits because she had “a lot of bills that were backing up” and some of her creditors were threatening to “send [her] to collections.” Transcript at 25. Claimant’s financial situation caused her to become “really frustrated and overwhelmed.” Transcript at 25. During the call with the Department representative, she learned that her doctor’s note was invalid and she would need to produce a new one in just 48 hours. At the time of the call’s conclusion, claimant was upset and crying and stated to the manager, “[T]his is why [I] should have killed [my]self.” Transcript at 14. The manager was concerned for claimant’s wellbeing, and brought her to the conference room to calm down and try to obtain a new doctor’s note. Claimant’s substantial emotional difficulties and reference to suicide suggest that she was not aware of her actions when she used foul language in a loud voice, but had simply lost control of her behavior and acted on impulse.

The record therefore fails to show that claimant was indifferent to the consequences of her actions or conscious of her conduct. The employer therefore did not prove that claimant acted with wanton negligence during the October 9, 2024, incident. Because claimant’s violation of the employer’s policy on October 9, 2024, was not willful or wantonly negligent, the employer discharged claimant, not for misconduct. Claimant is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 24-UI-278155 is set aside, as outlined above.

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

DATE of Service: February 18, 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.

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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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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