

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0095

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 26, 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 June 30, 2024 (decision # L0007432188).¹ Claimant filed a timely request for hearing. On January 30, 2025, ALJ Ensign conducted a hearing, and on February 3, 2025, issued Order No. 25-UI-281778, affirming decision # L0007432188. On February 14, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) St. Charles Health System, Inc. employed claimant as a medical staff service assistant from January 1, 2023, through July 3, 2024.

(2) The employer expected that their employees would not “tak[e] retaliatory action against any [employee] because he or she reported a problem or concern.” Exhibit 1 at 5. Claimant knew of this expectation. The employer’s written policy defined “retaliatory action” as “[a]ny form of adverse employment action of bullying or intimidation against [an employee] as a result of their good faith report of harassment or discrimination.” *See* Transcript at 15-16.

(3) On or around July 1, 2024, the employer warned claimant regarding several points of dissatisfaction with her work, including that she allegedly told coworkers that she and they could ignore a ringing telephone that the employer had expected them to answer. Claimant disagreed with this allegation and believed she knew which of her coworkers made the allegation to the employer. The warning included a copy of the employer’s “retaliatory action” policy, but did not state that claimant could not discuss

¹ Decision # L0007432188 stated that claimant was denied benefits from June 30, 2024 to October 4, 2025. However, decision # L0007432188 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 30, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

details of the warning with others, including the complainants, in ways that did not violate that policy. Claimant “shared details” of the warning with several coworkers. Transcript at 14.

(4) On July 2, 2024, claimant encountered the coworker she suspected had made the telephone allegation as they were both walking to their cars to leave work. The coworker congratulated claimant on an unrelated matter. Claimant thanked the coworker, “confided in him” that “it just kind of sucks that [she received] a full verbal warning,” and explained that she found the evidence prompting the warning was “a little messed up.” Transcript at 9. Claimant further said to the coworker, “I knew it was you that... went ahead and let the managers know. I have no real ill will toward it. It is what it is. And I’ve just been kind of feeling down about it as of late.” Transcript at 9. The coworker replied, “I’m so sorry that happened,” to which claimant responded, “[I]t’s okay.” Transcript at 9. They each then went to their respective cars and left work. Claimant’s intention in engaging in this conversation was to “make amends” with the coworker and not to bully or intimidate him. Transcript at 7. The following day, the coworker reported the conversation to the employer.

(5) On July 3, 2024, the employer discharged claimant for violating their “retaliatory action” policy. Specifically, the employer cited claimant sharing details of the warning with coworkers, and the employer’s belief that on July 2, 2024, claimant “confronted [the coworker] outside of the office after work and told [him] that [she] knew he had reported concerns about [her], leading to [the warning].” Exhibit 1 at 2. Claimant did not work for the employer thereafter.

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 she engaged in “retaliatory action” toward a coworker who had made an allegation against claimant that resulted in disciplinary action. The order under review concluded, “Claimant was aware that, regardless of intent, she was not to investigate who made the report and not to speak with her coworkers about the disciplinary action taken against her because of the reports made. Claimant’s decision to speak with coworkers about the coworker’s involvement in the complaints against her was a willful or wantonly negligent violation of employer’s policy.” Order No. 25-UI-281778. The record does not support these conclusions.

The employer reasonably expected that their employees would not engage in “retaliatory action,” which the employee handbook defined as “[a]ny form of adverse employment action of bullying or intimidation against [an employee] as a result of their good faith report of harassment or discrimination.”

See Transcript at 15-16. The employer did not communicate to claimant any further policy or expectation that she not discuss disciplinary matters against her with others. The employer believed that claimant violated their expectations by speaking with a coworker whom she believed was partly responsible for her receiving a disciplinary warning, and for sharing details of the warning with other coworkers.

The record shows that the initial report the coworker made about claimant, resulting in her being disciplined, involved allegedly ignoring a ringing telephone that the employer had expected them to answer. As this report did not involve an allegation of “harassment or discrimination,” it does not appear that any action claimant took in response would fall within the employer’s written definition of “retaliatory action,” which limits its scope to complaints involving only those subjects. Further, in their written explanation for discharging claimant, the employer described the actions they considered retaliatory, which could not objectively be viewed as “bullying or intimidating” for reasons discussed in detail below.

The employer wrote that claimant was discharged because she “approached several team members and shared the details related to [claimant’s] corrective action” and “confronted [the reporting coworker] outside of the office after work and told [him] that [she] knew he had reported concerns about [her.]” Exhibit 1 at 2. Claimant agreed that she had engaged in both actions, but testified that she “was simply expressing how [she] was down that day,” and described her conversation with the reporting coworker as “trying to make amends.” Transcript at 7, 10. Claimant testified that she thought her supervisor would be pleased that “we had a good conversation and we talked things over. Like we cleared the air and it was a productive engagement of two people.” Transcript at 17. Claimant further testified that she believed that engaging in such discussions with coworkers was consistent with the employer’s “support [of] informal and open communication” to resolve disputes, and that she was never told not to discuss the warning with others. Transcript at 10, 15.

The employer did not show that claimant knew or should have known of an expectation that she not discuss the warning with others in ways that did not violate the “retaliatory action” policy. Moreover, the employer did not rebut claimant’s account of her conversation with the reporting coworker, which was conciliatory in nature and not intended as “bullying or intimidation” that would violate the policy. That the coworker promptly reported the conversation to the employer suggests that he may have interpreted it as an attempt at bullying or intimidation, but this interpretation is not objectively supported by the content of claimant’s statements and the context in which they were made. Furthermore, the employer has not shown that claimant knew or should have known that her statements would be viewed as bullying or intimidating, or that she made them with indifference to the consequences of her actions. Therefore, the employer did not meet their burden to show that claimant willfully or with wanton negligence violated their written “retaliatory action” policy. Accordingly, the employer did not discharge claimant 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. 25-UI-281778 is set aside, as outlined above.

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

DATE of Service: March 12, 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

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

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