

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0111

Affirmed
Request to Reopen Denied
No Disqualification

PROCEDURAL HISTORY: On August 2, 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 January 21, 2024 (decision # L0005483586).¹ Claimant filed a timely request for hearing. On January 31, 2025, ALJ Murray conducted a hearing at which the employer failed to appear, and issued Order No. 25-UI-281721, reversing decision # L0005483586 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On February 10, 2025, the employer filed a timely request to reopen the January 31, 2025 hearing. ALJ Scott considered the employer's request, and on February 12, 2025 issued Order No. 25-UI-282888, denying the employer's request to reopen as without good cause and leaving Order No. 25-UI-281721 undisturbed. On February 23, 2025, the employer filed an application for review of Order No. 25-UI-282888 with the Employment Appeals Board (EAB). These matters are before EAB based on the employer's February 10, 2025 request to reopen, which is treated under rule as an application for review of Order No. 25-UI-281721, and the employer's application for review of Order No. 25-UI-282888.²

EAB combined its review of Orders No. 25-UI-281721 and 25-UI-282888 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0107 and 2025-EAB-0111).

¹ Decision # L0005483586 stated that claimant was denied benefits from January 28, 2024 to January 25, 2025. However, as decision # L0005483586 concluded that claimant was discharged on January 25, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 21, 2024 and until he earned four times his weekly benefit amount. See ORS 657.176.

² OAR 471-040-0040(6) (February 10, 2012) provides, in relevant part: "In the event that the OAH [Office of Administrative Hearings] subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision."

FINDINGS OF FACT: (1) Mt. Hood Meadows Oregon, Ltd. employed claimant in various positions at their ski resort, most recently as a sous chef, from approximately December 2020 through January 25, 2024.

(2) The employer expected that their employees would act in a manner consistent with a work environment that was “respectful, safe, and free from harassment.” Exhibit 2 at 5. Claimant received a copy of this policy in writing at hire.

(3) On July 1, 2021, claimant received a warning for having texted a coworker something along the lines of, “How. . . dare you say anything about. . . my people and where they belong in society?” in response to the coworker having made what claimant considered racist remarks. Audio Record at 20:28. The employer considered this to be a violation of their work environment policy.

(4) On November 27, 2022, claimant received a warning for having complained to a coworker about that coworker making what claimant perceived as “rude” remarks.³ Audio Record at 12:29. The coworker took offense to the complaint and accused claimant of saying that he was “racist,” which claimant denied, and ultimately the discussion devolved into claimant telling the coworker to “F off.” Audio Record at 12:48. A supervising chef witnessed the interaction.

(5) On January 25, 2024, the employer prevented claimant from clocking in for his scheduled shift and told him that he was being discharged. The employer requested that claimant meet with them to discuss the discharge, but claimant refused to do so if the employer would not pay him for his time, and they were unwilling to do so. The employer provided claimant with paperwork related to the discharge, which he discarded in anger without reading. Claimant had “no idea” why the employer had decided to discharge him at that time, and felt that he had “tried to be as respectful to people as [he could].” Audio Record at 9:04. Claimant did not work for the employer thereafter.

(6) At the time of discharge, the employer presented claimant with a letter stating that the decision to discharge him was “a result of reports we have received regarding inappropriate behaviors and statements you have made toward other team members in the company.” Exhibit 2 at 5. The letter did not provide any specifics regarding these reports, including when they or the conduct underlying them allegedly occurred, but asserted that claimant’s actions “are a direct violation of our Respectful Workplace and Harassment policies,” and cited claimant’s two prior warnings. Exhibit 2 at 5.

(7) On January 16, 2024, OAH mailed notice to the employer’s address of record that a hearing on decision # L0005483586 had been scheduled for January 31, 2025. The employer received the hearing notice shortly thereafter, but it was not directed to their human resources department “until after the hearing occurred” because they had “recently lost the team member that would deliver mail to departments.” Exhibit 5 at 2.

³ The timing of this incident was somewhat ambiguous in the record, as claimant described it as happening “around a year prior” to his discharge, when “starting to get into fall around October, August.” Audio Record at 12:00. As the employer asserted in claimant’s discharge letter that his second and only other warning occurred on November 27, 2022, it is more likely than not that this warning occurred on the date contained in the employer’s records.

(8) On January 31, 2025, the employer failed to attend the hearing because the employer's internal mail distribution process had failed to deliver the notice to the employee responsible for attending. Later that day, Order No. 25-UI-281721 was issued, reversing decision # L0005483586.

(9) On February 10, 2025, the employer filed a request to reopen the January 31, 2025 hearing that included a written statement explaining why they missed the hearing.

CONCLUSIONS AND REASONS: The employer's request to reopen the January 31, 2025 hearing is denied. 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). 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).

The employer's request to reopen was filed on February 10, 2025, within 20 days of the issuance of Order No. 25-UI-281721, and contained a written statement setting forth the reasons the employer missed the hearing. Therefore, the request met the threshold requirements for consideration.

The employer's human resources supervisor wrote in their statement, "We recently lost the team member that would deliver mail to departments, and we did not receive the notice of hearing until after the hearing occurred." Exhibit 5 at 2. This evidence does not demonstrate that the timely internal distribution of the employer's mail to the appropriate department was beyond the employer's reasonable control, despite the temporary vacancy. Similarly, while the employer's failure to timely distribute the notice to the appropriate department may be considered a mistake, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Due process was satisfied by the postal service delivering the notice to the employer's address of record on file with the Department prior to the hearing date, and the employer did not suggest in their statement that such delivery did not occur. Accordingly, the employer has not shown good cause for missing the January 31, 2025 hearing, and their request to reopen the hearing is therefore denied.

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 for what they believed were “inappropriate behaviors and statements” toward other employees. Exhibit 2 at 5. The employer reasonably expected that their employees would act in a manner consistent with a work environment that was “respectful, safe, and free from harassment.” Exhibit 2 at 5. Claimant was aware of this expectation, which the employer referred to as their “Respectful Workplace and Harassment” policies. Exhibit 2 at 5. The letter the employer provided to claimant explaining his discharge cited two alleged prior violations of this policy for which he had received warnings on July 1, 2021 and November 27, 2022. As both warnings occurred more than one year prior to claimant’s discharge, it is reasonable to infer that the conduct underlying them was not the proximate cause of his discharge. The discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012.

The discharge letter implied that the employer believed claimant engaged in conduct violative of their “Respectful Workplace and Harassment” policies shortly before January 25, 2024, or at least that the employer received reports of alleged conduct around that time. However, the letter failed to specify the details of these reports or the alleged conduct on which they were based. Given the absence of these details in the record, and claimant’s testimony that he had “tried to be as respectful to people as [he could]” during his employment, the employer has not met their burden of showing by a preponderance of the evidence that claimant violated a reasonable employer policy with respect to the reports that led the employer to discharge him. Audio Record at 9:04. Accordingly, the employer has not shown that claimant was discharged for misconduct.

For these reasons, the employer’s request to reopen the January 31, 2025 hearing is denied. Claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits.

DECISION: Orders No. 25-UI-281721 and 25-UI-282888 are affirmed.

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

DATE of Service: March 21, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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