EO: Intrastate
BYE: 03-Jan-2026

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

234
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0133

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 30, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was suspended by the employer for misconduct, disqualifying claimant from receiving benefits effective December 29, 2024 (decision # L0008982460).[1] Claimant filed a timely request for hearing. On February 20, 2025, ALJ Allen conducted a hearing, and on February 25, 2025, issued Order No. 25-UI-284095, affirming decision # L0008982460. On March 3, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090.

The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Murphy Company employed claimant as a millwright from March 25, 2024, through at least December 28, 2024.

[1] Decision # L0008982460 stated that claimant was denied benefits from January 5, 2025 to January 3, 2026. However, as decision # L0008982460 found that claimant was suspended on December 30, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 29, 2024, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(2) The employer maintained an attendance policy requiring their employees to notify the employer at least two hours prior to the beginning of a shift if they were to be absent, or within two hours of learning they would be absent if providing notice earlier was not possible. Claimant acknowledged receiving a written copy of this policy at hire.

(3) On December 28, 2024, claimant was scheduled to work at 6:00 a.m. On the evening of December 27, 2024, claimant texted her supervisor, "I'm in bed all day with a fever and my family was sick, too. And I hope to feel better by morning." Transcript at 27. Claimant assumed that her text message had been sufficient notice to the employer that she would be absent from work the following day unless her condition improved. Claimant's supervisor expected that claimant would provide additional notice that she would be absent, in accordance with the employer' written policy, in the morning of December 28 if such an absence were to occur.

(4) On December 28, 2024, at 6:37 a.m., someone texted claimant's supervisor on claimant's behalf, "Good morning. She's still sick. She's been up through the night." Transcript at 11. Claimant had tested positive for COVID-19 and had "a high fever" that persisted through the morning of December 28. Transcript at 21. Claimant did not attend work that day due to her illness.

(5) On December 29, 2024, claimant was again scheduled to work beginning at 6:00 a.m. At 4:00 a.m., claimant texted her supervisor that she remained ill and would be absent from work again that day.

(6) The employer suspended claimant from work for three days, retroactively beginning on December 28, 2024, because they believed she failed to provide notice of her absence that day in accordance with their policy.[2]

CONCLUSIONS AND REASONS: Claimant was suspended, but not for misconduct.

ORS 657.176(2)(b) requires a disqualification from unemployment insurance benefits if the employer suspended claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) and (b) 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). By logical extension, this burden of proof applies to cases of suspension from work as it would apply to a discharge.

The employer suspended claimant because they believed that she failed to timely notify them of her absence on December 28, 2024, in accordance with their written policy.[3] The employer reasonably

[2] The record suggests that the employer may have decided to discharge claimant for this alleged violation upon expiration of the suspension, but as the administrative decision under review imposed a disqualification from benefits based on a suspension rather than work separation, the events following the suspension need not be further explored in this decision.

expected that their employees would notify the employer when they would be absent at least two hours prior to the beginning of a shift, or within two hours of learning that they would be absent if providing notice earlier was not possible. Claimant was aware of this expectation.

The order under review concluded that claimant violated the policy by not definitively notifying her supervisor that she would be absent until 6:37 a.m., after her December 28, 2024, shift began, and that the violation was willful or wantonly negligent. Order No. 25-UI-284095 at 4. The record does not show that claimant violated the policy willfully or with wanton negligence.

On December 27, 2024, claimant was experiencing symptoms of COVID-19 that were severe enough to prevent her from working. That evening, she texted her supervisor, "I'm in bed all day with a fever and my family was sick, too. And I hope to feel better by morning." Transcript at 27. Claimant testified regarding this text, "I assumed that that was logistic [*sic*] of me not being able to make it into work the next day because I did call in prior." Transcript by 21. It is reasonable to infer from this testimony that claimant believed that the text was sufficient to satisfy the employer's notice requirement that she would be absent from work the following day. However, as the text did not definitively state that claimant *would* be absent and left open the possibility that her condition would improve to the point that she would be able to work, it did not meet the requirements of the employer's written policy. The text sent to claimant's supervisor the next morning, which provided an update on claimant's condition but did not specifically mention her absence from work, was sent after her shift began and therefore also failed to meet the requirements of the employer's policy.

Nonetheless, claimant's belief that her December 27, 2024, text had conveyed to her supervisor that he should expect her to be absent from work the following day unless her condition improved was not unreasonable. That claimant sent the text showed that she was not acting with indifference to the employer's interest or their attendance policy. Claimant's mistake as to how her supervisor would interpret the text resulted in her failure to confirm, two hours prior to her December 28, 2024, shift, that her condition had not improved and that she would be absent from work as the text had implied. Under these circumstances, claimant's mistake amounted to no more than ordinary negligence. Accordingly, the employer has not shown that claimant violated their attendance policy willfully or with wanton negligence. Claimant therefore was not suspended for misconduct.

For these reasons, claimant was not suspended for misconduct and is not disqualified from receiving benefits on that basis.

DECISION: Order No. 25-UI-284095 is set aside, as outlined above.

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[3] The employer alleged that prior policy violations factored into their decision to suspend claimant, and claimant, to some degree, disputed those violations. Because claimant did not violate the employer's attendance policy willfully or with wanton negligence on December 28, 2024, for reasons discussed in greater detail below, it is not necessary to determine whether it was part of a pattern of other willful or wantonly negligent behavior, and these prior incidents are therefore not addressed in this decision. *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).

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

DATE of Service: April 4, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. If 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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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