

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0134

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 14, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, disqualifying claimant from receiving benefits effective December 8, 2024 (decision # L0008571694).¹ Claimant filed a timely request for hearing. On February 6, 2025, ALJ Hall conducted a hearing, and on February 12, 2025, issued Order No. 25-UI-282981, reversing decision # L0008571694 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On March 3, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Exclusive Wireless, Inc. employed claimant as the manager of one of their retail stores from April 29 through December 12, 2024. In his role as store manager, claimant reported to the employer's "market manager." Transcript at 7.

(2) The employer maintained an attendance policy that required employees to notify their supervisor at least two hours in advance if they were unable to work a scheduled shift. Claimant understood this policy.

(3) During the week of December 2, 2024, claimant took time off from work to drive from Oregon to the east coast and help his mother, who had recently become homeless. On or around December 9, 2024, when claimant and his mother were about a day's drive away from Oregon, they became stuck in a snowstorm and were unable to complete their journey until the weather improved. In the evening of December 9, 2024, claimant texted the market manager and told him that claimant would not be at work

¹ Decision # L0008571694 stated that claimant was denied benefits from December 8, 2024, to December 6, 2025. However, as decision # L0008571694 found that claimant was discharged on December 12, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 8, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

the following day as originally scheduled because he was stuck in a snowstorm. Claimant did not separately contact his manager about the absence on December 10, 2024.

(4) On December 10, 2024, the market manager contacted the employer's human resources (HR) department to request their approval to discharge claimant. The manager made this request because claimant failed to report for work that day, and the manager believed that claimant did not notify the manager at least two hours prior to the start of his shift that he would be absent. The HR department approved the manager's request.

(5) On December 11, 2024, claimant arrived late for his shift.

(6) On December 12, 2024, the employer discharged claimant because they believed that claimant failed to notify his manager of his December 10, 2024, absence at least two hours prior to the start of his shift.

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 he allegedly violated their attendance policy. As a preliminary matter, claimant's last alleged violation of the employer's attendance policy took place on December 11, 2024, when he was late for work.² This would typically be considered the proximate cause for his discharge. *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).

However, despite not being the last alleged violation of their attendance policy, claimant's alleged failure to timely notify his manager of his absence on December 10, 2024, was the proximate cause of the discharge. At hearing, the employer's witness testified, "And then the... date that the termination

² The employer's witness also testified that claimant had violated their attendance policy on several prior occasions and that the employer had disciplined him for these occurrences. Transcript at 7–9. Claimant asserted that the employer had never disciplined him for such occurrences, and that he was not aware that they had considered him to have violated their policy previously. Transcript at 21. It is not necessary to resolve these disputes of fact, however, because, as explained below, the record does not show that the reason for which the employer discharged claimant constituted a willful or wantonly negligent violation of their standards of behavior.

was requested was December 10th because [claimant] didn't show up for his scheduled shift on December 10th. And that's when his market manager requested approval for... termination and we approved his termination on December 10th." Transcript at 7. Thus, irrespective of the fact that claimant was late for work the following day, the employer had already decided to discharge claimant based on his alleged failure to provide sufficient notice of his absence the previous day. Therefore, the proximate cause of claimant's discharge was claimant's alleged failure to provide sufficient notice of his absence on December 10, 2024, and this is the proper focus of the misconduct analysis.

As to that allegation, the parties offered conflicting accounts. As noted above, the employer's witness testified that claimant failed to notify his manager of the absence at least two hours prior to the start of the shift. By contrast, claimant testified that he notified his manager via text message on the evening of December 9, 2024, that he would be absent the following day because he had gotten stuck in a snowstorm while returning to Oregon. Transcript at 19. The employer's witness was the employer's HR manager, not claimant's direct manager, and the record does not indicate that she had direct knowledge of what, if anything, claimant told his manager. Her testimony therefore is afforded less weight than claimant's first-hand account. As such, the weight of the evidence supports claimant's account that he notified his manager the night before the shift that he would be absent, and the facts have been found accordingly.

The record does not show that the employer's policy required a *maximum* time by which an employee was required to notify their supervisor of an absence—only a minimum. Because claimant notified his manager of his absence the night before the shift started, he gave them considerably more notice than the two hours required by their policy. As such, the incident for which claimant was discharged was not a violation of the employer's policy. Claimant therefore was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 25-UI-282981 is affirmed.

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

DATE of Service: April 4, 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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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