

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0156

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 20, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0007743228). The employer filed a timely request for hearing. On February 7, 2025, and continuing on February 24, 2025, ALJ Parnell conducted a hearing, and on February 25, 2025, issued Order No. 25-UI-284194, affirming decision # L0007743228. On March 11, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lowe’s Home Centers, LLC employed claimant as a plumbing sales associate in one of their stores from April 10, 2024, through November 1, 2024.

(2) The employer had a written policy concerning workplace violence which claimant was provided at hire. The policy prohibited “acts or threats of violence, whether expressed or implied, involving [the employer’s] associates or occurring on [the employer’s] property.” February 24, 2025, Audio Record at 12:44.

(3) On October 28, 2024, a customer approached claimant in the store and asked him to locate another employee who had been assisting the customer earlier to provide further assistance. Claimant used a radio to summon the other employee several times, but the employee did not come to the location.

(4) Eventually, claimant saw the other employee walking through the store and approached him to discuss his failure to respond to the radio requests. Claimant did not stand close enough to the employee that claimant considered it to be “in his face” or “nose to nose.” February 24, 2025, Audio Record at 21:45. Claimant was “upset” that the employee had ignored him and the customer. February 24, 2025, Audio Record at 19:00. The employee would not explain to claimant why he refused to go to the customer but “got louder and louder” in speaking to claimant, who did not raise his voice. February 24, 2025, Audio Record at 20:18. Claimant considered the employee’s behavior toward him during the interaction to be “really rude.” February 24, 2025, Audio Record at 20:22. Claimant “was trying to calm

him down” and said, “This is not the place or the time. We cannot do this here,” by which he meant “arguing in front of a customer.” February 24, 2025, Audio Record at 19:40. Claimant and the employee then separated. Claimant had not intended to make or imply a threat toward the other employee.

(5) When claimant approached the employee and began the interaction, the attention of another employee was drawn to them. The employee witness felt “intimidated” by claimant’s actions and “ran away to go find a . . . management team member” as the interaction took place. February 24, 2025, Audio Record at 24:57. The employer subsequently reviewed surveillance footage of the interaction and conducted witness interviews. After doing so, the employer believed that claimant was the “aggressor” in the situation, “got in [the other employee’s] face, pretty much nose to nose, raising his voice and yelling at him,” February 24, 2025, Audio Record at 10:40. The employer believed that claimant stated to the employee, “Anytime, anywhere,” which the employee took as “implying a threat that [claimant] could kick his ass.” February 24, 2025, Audio Record at 10:58.

(6) On November 1, 2024, the employer discharged claimant because they believed that claimant’s actions violated their workplace violence policy.

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 he violated their workplace violence policy in an interaction with another employee on October 28, 2024. The employer reasonably expected that their employees would not engage in “acts or threats of violence, whether expressed or implied, involving [the employer’s] associates or occurring on [the employer’s] property.” February 24, 2025, Audio Record at 12:44. Claimant understood this expectation.

The parties gave conflicting accounts of claimant’s interaction with the other employee. An assistant store manager was the employer’s sole witness at hearing and his testimony was based on reports generated from the accounts of employee witnesses and surveillance footage. *See* February 24, 2025, Audio Record at 25:00. From information provided by those sources, the employer asserted at hearing that claimant was the “aggressor” in the interaction, “got in [the other employee’s] face, pretty much nose to nose, raising his voice and yelling at him,” and stated, “Anytime, anywhere.” February 24, 2025, Audio Record at 10:40, 10:58. The employee involved, as well as the employer, interpreted these actions and the statement as an implied threat of violence.

In contrast, claimant testified that though he approached the other employee while “upset,” claimant never raised his voice, “got in [the employee’s] face,” or stated, “Anytime, anywhere.” February 24, 2025, Audio Record at 19:00, 20:18, 21:45. Claimant explicitly denied making or implying a threat of violence, and testified that he merely told the other employee, “This is not the place or the time. We cannot do this here,” by which he meant “arguing in front of a customer.” February 24, 2025, Audio Record at 19:40, 25:40.

In weighing these conflicting accounts, claimant’s first-hand testimony is entitled to greater weight than the contrasting hearsay accounts relayed by the employer’s witness, and the facts have been found accordingly. Therefore, claimant’s actions in talking to the other employee without raising his voice or approaching him too closely, and suggesting that it was “not the place or the time” to argue in front of a customer, did not constitute an expressed or implied threat of violence. Accordingly, the employer has not shown by a preponderance of the evidence that claimant violated their workplace violence policy. As such, they have not met their burden of showing that claimant was discharged for misconduct.

For these reasons, claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-284194 is affirmed.

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

DATE of Service: April 10, 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 محكمة 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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