

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0166

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 27, 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 # L0007349675). The employer filed a timely request for hearing. On February 24, 2025, ALJ Honea conducted a hearing, and on March 4, 2025, issued Order No. 25-UI-284809, affirming decision # L0007349675. On March 13, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their argument to claimant 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 the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Meyer Distributing, Inc. employed claimant as a warehouse operator from May 20, 2024 through November 7, 2024.

(2) The employer had a written attendance policy which forbade employees from leaving work early without permission and which required employees to call an attendance line and report that they would be absent prior to the start of their shift. Claimant understood this policy.

(3) At some time prior to October 31, 2024, claimant advised his supervisor that his wife was expected to give birth soon and that claimant intended to take paternity leave when that occurred. Claimant was advised to contact the employer's human resources department and discuss his options with them, which he did. The human resources department told claimant that he would be approved for two weeks of leave, which would be unpaid by the employer but potentially eligible for benefits through Paid Leave

Oregon, and that he should notify the human resources department and his supervisor when he wanted the leave to begin.

(4) On October 31, 2024, claimant was scheduled to work until 5:00 p.m. Claimant believed it likely that his wife would be going into labor that day and requested permission of his supervisor to use a telephone for status updates because such use was ordinarily forbidden. Claimant's supervisor approved the request. Claimant left his workstation numerous times during his shift to use the telephone, and the employer felt that claimant was not being sufficiently productive. That afternoon, the employer decided to issue a written warning to claimant for his lack of productivity and because claimant had not secured a "written agreement" to use his telephone at work. Transcript at 26. Claimant felt that the warning was undeserved under the circumstances.

(5) At approximately 3:55 p.m., while the warning was being issued, claimant told his supervisor that he wanted to use an hour of accrued paid leave to finish his shift immediately, and that he would begin his two weeks of paternity leave the following day. Claimant's supervisor replied, "[T]hat's fine," while a higher-level manager who was also delivering the warning replied, "[W]e'll see about that," regarding the paternity leave. Transcript at 27. Claimant then left work early. Neither claimant's supervisor nor the manager made note of approving claimant's requests to leave early or commence paternity leave in claimant's personnel file, though it was the employer's practice to keep such records.

(6) On November 1, 2024, claimant telephoned the human resources department and left a voicemail stating that he was beginning the paternity leave that day and expected to return to work in two weeks. Claimant did not receive a reply. Claimant did not believe that he was expected to work during the following two weeks and therefore made no additional efforts to report absences using the attendance line.

(7) Prior to the events of October 31, 2024, claimant had been scheduled to work on November 1, 2024, and each day from November 4 through November 7, 2024. The employer's human resources department had no record of claimant having been granted paternity leave, though it was the employer's practice to keep such records. The employer therefore expected claimant to either have been at work or have reported his absence in accordance with their policy each day he had been scheduled to work from November 1 through November 7, 2024.

(8) On November 7, 2024, the employer decided to discharge claimant for having left work early without permission on October 31, 2024 and having been absent without notice from November 1 through November 7, 2024. The employer did not notify claimant of his discharge.

(9) On November 13, 2024, claimant telephoned the human resources department to request that his paternity leave end early and that he be allowed to return to work the following day. The representative he spoke with said that they would return his call after speaking with claimant's supervisor about scheduling, but did not contact claimant again. Claimant learned from a coworker a few days later that the employer had discharged him. Claimant then filed a claim for unemployment insurance benefits.

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 left work early without permission on October 31, 2024, and was absent without notice for his next five shifts. While the employer also asserted that claimant violated their expectations earlier on October 31, 2024 by being unproductive and using his telephone, the employer chose to warn claimant for this conduct rather than discharge him, and it was therefore not the proximate cause of his discharge. Therefore, only the alleged attendance policy violations are the subject of the discharge analysis. *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).

The employer had a written attendance policy which forbade employees from leaving work early without permission and which required employees to call an attendance line to report that they would be absent prior to the start of their shift. Claimant understood this policy. The parties agreed that claimant left work at 3:55 p.m. on October 31, 2024, prior to the 5:00 p.m. scheduled end of his shift. They also agreed that claimant did not report for work on November 1, 2024, and from November 4 through November 7, 2024, or call the attendance line prior to each of those shifts to report that he would be absent.

Claimant testified that prior to leaving work on October 31, 2024, he told his supervisor that he wanted to use an hour of accrued paid leave to end his shift early and that he would begin a pre-approved two-week period of paternity leave the following day, to which his supervisor replied, “[T]hat’s fine.” Transcript at 24. Claimant explained that he had previously discussed the paternity leave with his supervisor and another manager and, at their direction, had called the human resources department “in front of his supervisor.” Transcript at 24. During that call, claimant requested two weeks of leave, for which he was told he might receive benefits through Paid Leave Oregon, and claimant asked if he “need[ed] to do any other paperwork.” Transcript at 24. Claimant testified that the human resources representative replied that claimant was “good” as long as he told his supervisor “what day [he was] leaving and tr[ie]d to call [his supervisor] the day that [he was] coming back.” Transcript at 24.

Claimant further testified, “I was only supposed to call HR the day that I was taking leave, and they would know that I’m on leave, and then the day that I was expected to come back, I was supposed to give them a call.” Transcript at 24. Claimant testified that on November 1, 2024, he left a voicemail for the human resources department stating that he had begun his paternity leave and “should be back by the

15th.” Transcript at 41. Claimant next spoke with a human resources representative on November 13, 2024, when he asked to return to work the following day, and was told that he would receive a call back after they discussed scheduling with claimant’s supervisor, but claimant never heard back from the employer and learned from a coworker a few days later that he had been discharged. Transcript at 31-32.

The employer’s human resources administrator was the employer’s sole witness at hearing. She testified that according to the employer’s records, claimant left work early on October 31, 2024, because “he was angry at receiving the warning” and “did not tell anyone” that he was leaving. Transcript at 5. She agreed that claimant had spoken to his supervisor and a manger sometime before October 31, 2024 about wanting to take paternity leave. However, the witness testified that the supervisor and manager had provided claimant with a printout of the relevant policy and directed claimant to contact human resources, but that claimant “did not contact [human resources] after [being] given the information.” Transcript at 14-15. The employer therefore considered claimant’s absences on November 1 and November 4 through 7, 2024 to be “no call, no show” in violation of their attendance policy. Transcript at 18. The employer’s witness testified that if an employee is being discharged for an attendance violation, it is their practice for a supervisor to “write[] down” any communications they had with the employee that might explain their absence, and that she saw no such notation in claimant’s records. Transcript at 18.

In weighing these conflicting accounts, claimant’s first-hand accounts of his conversations with his supervisor, the manager, and the human resources representatives are entitled to greater weight than the employer’s hearsay accounts, and the lack of notations in his personnel file that the employer asserted contradict claimant’s accounts. The facts have been found accordingly. Therefore, the employer failed to show by a preponderance of the evidence that claimant left work early without permission on October 31, 2024, or that he was not on pre-approved paternity leave from November 1 through November 7, 2024, and therefore excused from using the attendance line to report his absences each day of the leave. Accordingly, the employer has not met their burden to show that claimant violated their attendance policy. Claimant was therefore not discharged 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-284809 is affirmed.

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

DATE of Service: April 14, 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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