

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0169

Reversed
Disqualification

PROCEDURAL HISTORY: On December 3, 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 October 6, 2024 (decision # L0007572744).¹ Claimant filed a timely request for hearing. On March 3, 2025, ALJ Bender conducted a hearing, and on March 11, 2025, issued Order No. 25-UI-285666, reversing decision # L0007572744 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On March 17, 2025, the employer filed an application for review of Order No. 25-UI-285666 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer provided written arguments to EAB. The employer did not say that they provided a copy of their arguments to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments also had 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) Geoffrey R. Clive DDS, LLC employed claimant as an office manager at their dental practice from January 2022 through October 6, 2024.

(2) The employer expected that their employees would not appropriate the employer's funds for their own use and would not intentionally falsify bookkeeping records. Claimant understood these expectations.

¹ Decision # L0007572744 stated that claimant was denied benefits from November 3, 2024 to November 1, 2025. However, as decision # L0007572744 concluded that the work separation occurred on October 6, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 6, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) Each day, claimant or one of two other employees would add the business' receipts and record the totals on a paper "End of Day Report" form. *See, e.g.,* Exhibit 1 at 2. That employee would then seal the cash received that day in a tamper-proof bank deposit envelope, which would later be stored in the employer's safe. At some later time, claimant would enter the information from the End of Day Report into the QuickBooks software program on her computer, and date and initial the End of Day Report that she had done so.

(4) Once per month, the employer's owner would open the safe and give the deposit envelopes to claimant to take to the bank and deposit in the employer's account. If claimant was absent from work when the deposit needed to be made, the owner or another employee would make the deposit instead.

(5) On December 28, 2023, March 28, 2024, and July 24, 2024, claimant's coworker, M., prepared the day's End of Day Report. The reports listed \$2,000, \$1,400, and \$1,270 in cash received on those days, respectively. On those days, M. sealed the listed amount of cash in a deposit envelope and the envelope was placed in the employer's safe.²

(6) On January 5, 2024, March 28, 2024, and July 31, 2024, claimant was given envelopes from the safe to deposit in the employer's bank account, including envelopes containing cash receipts from December 28, 2023, March 28, 2024, and July 24, 2024, respectively. Claimant failed to deposit envelopes containing \$2,000, \$1,000, and \$1,270, and kept this money for her own use.

(7) On January 4, 2024, April 4, 2024, and August 8, 2024, claimant entered the information from the December 28, 2023, March 28, 2024, and July 24, 2024, End of Day Reports, respectively, into QuickBooks. Claimant dated and initialed each End of Day Report to signify that she made the entry at the time it was made. Claimant accurately entered the information from the December 28, 2023, and March 28, 2024, reports on January 4, 2024, and April 4, 2024, respectively. With respect to the July 24, 2024, End of Day Report, claimant falsely entered that no cash was received that day, rather than the amount of \$1,270 written on the report, to conceal from the employer that she had failed to deposit the envelope containing that amount.

(8) On February 27, 2024, claimant edited the QuickBooks entry for the December 28, 2023, End of Day Report to falsely reflect that no cash had been received that day, instead of the \$2,000 listed on the report. Claimant did so to conceal from the employer that she had failed to deposit the envelope containing that amount on January 4, 2024.

(9) Two other employees, including M., occasionally used claimant's computer to perform specific tasks they could not perform on any other computer. However, only claimant was tasked with making entries or edits in QuickBooks. QuickBooks kept a log of all activity conducted within the program, and the employer had access to this log.

(10) In early October 2024, the employer reconciled information from QuickBooks, the End of Day Reports, or both, with their bank statements. The employer noticed a discrepancy in these sources that suggested at least one cash envelope entrusted to claimant had not been deposited in the bank account. Upon further investigation, the employer realized that a total of three envelopes entrusted to claimant

² The March 28, 2024 cash receipts were divided between two envelopes which contained \$400 and \$1,000.

had not been deposited in the bank account over the preceding year, which had contained a total of \$4,270. The employer verified through attendance records that claimant had been at work on January 5, 2024, March 28, 2024, and July 31, 2024, the dates of the affected bank deposits, and that no other employee had been at work on all three of those days.

(11) The employer also accessed the log of QuickBooks activity from claimant's computer, which showed that the alteration of the December 28, 2023, record occurred on February 27, 2024, at 2:07 p.m., and the original entry of the July 24, 2024, record occurred on August 8, 2024, at 2:31 p.m. The log also showed that routine QuickBooks entries unrelated to the missing envelopes were made on February 27, 2024, at 2:09 p.m., 2:10 p.m., 2:11 p.m., and 2:13 p.m.; and on August 8, 2024, at 2:29 p.m. and 2:37 p.m.

(12) Based on the owner's investigation, he concluded that claimant had misappropriated the three envelopes containing \$4,270, and had made false entries in QuickBooks to conceal the thefts. On October 6, 2024, the employer met with claimant to confront her regarding these conclusions. Claimant denied taking the envelopes and suggested that one of the other employees must have done so and made the false QuickBooks entries without her knowledge. The employer discharged claimant at that time because they believed she had misappropriated those deposits.

CONCLUSIONS AND REASONS: Claimant was discharged 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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). The following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

OAR 471-030-0038(1)(d).

The employer discharged claimant because they believed that claimant appropriated \$4,270 to her own use by failing to deposit cash belonging to the employer on three occasions from January through July 2024, and made false bookkeeping entries to conceal the thefts. The employer reasonably expected that their employees would not misappropriate funds or create false bookkeeping entries. Claimant understood these expectations. The order under review concluded that the employer failed to show by a preponderance of the evidence that claimant committed the thefts because "there are other plausible explanations for the disappearance of the money." Order No. 25-UI-285666 at 3. The record does not support this conclusion.

The parties generally agreed on the employer's cash handling procedures, in that either claimant, or one of two other employees, was responsible each day for preparing the End of Day Report and sealing the day's cash received in an individual deposit envelope that was then placed in a safe; claimant entered information from the report in QuickBooks and dated and initialed the report after she had done so; and once per month the owner took the cash envelopes from the safe and gave them to claimant to deposit at the bank. Claimant did not rebut the employer's assertion that their bank account records differed from the End of Day Reports, which suggested that envelopes from December 28, 2023, March 28, 2024, and July 24, 2024, containing \$2,000, \$1,000, and \$1,270, respectively, were not deposited in the account as expected during claimant's trips to the bank on January 5, 2024, March 28, 2024, and July 31, 2024, respectively. Based on this evidence, it is more likely than not that \$4,270 in cash was taken from the employer during this period. Claimant testified that she did not take this money or attempt to conceal its theft. Transcript at 20.

Neither the owner nor claimant testified to having a specific recollection of the days the January 5, 2024, March 28, 2024, and July 31, 2024 bank deposits were made. Claimant testified that when she was absent from work at the time a bank deposit was to be made, someone else made the deposit instead. Transcript at 24. However, claimant did not explicitly assert that she had been absent from work on any of those three days, or that she did not make those three bank deposits. The owner testified that attendance records showed that claimant worked all three days, and that no other employee worked all three days. Transcript at 9, 11. Claimant did not rebut this testimony. Therefore, more likely than not, claimant made the January 5, 2024, March 28, 2024, and July 31, 2024, bank deposits.

The employer asserted that claimant was the only person with the opportunity to have taken the money missing from those deposits. Transcript at 7, 9, 11. Claimant rebutted this assertion, testifying that once

a day's cash receipts were sealed in one or more deposit envelopes, the envelopes often sat unguarded in the office for extended periods of time before being put in the safe at the end of the day "or whenever anybody has time." Transcript at 22. Claimant asserted that the envelopes were therefore "accessible to everyone in the office" during those periods. Transcript at 22. Further, the record does not show what procedures, if any, were used to verify at the times envelopes were removed from the safe and given to claimant to take to the bank that the number of envelopes handed to her matched the number of envelopes recorded in End of Day Reports since the previous bank deposit. On this evidence, the employer has not shown that claimant was the only person with the opportunity to misappropriate an envelope, as it is possible an envelope could have been intercepted by someone else in the office on its way to the safe, without claimant or the owner noticing it missing when the other envelopes were removed from the safe for the bank deposit. However, other evidence established that, more likely than not, claimant took the envelopes in question.

The employer testified that claimant's work computer was used on February 27, 2024, to alter a QuickBooks entry for the December 28, 2023, End of Day Report to falsely show that no cash was received by the business that day. Transcript at 7, 13; *see also* Exhibit 1 at 8. The employer also testified that on August 8, 2024, claimant's work computer was used to make an initial QuickBooks entry for the July 24, 2024, End of Day Report that falsely listed that no cash was received that day. Transcript at 13; *see also* Exhibit 1 at 8. Claimant did not rebut this testimony, but testified that she did not "manipulate the deposits" and that the "QuickBooks deletions were not done by [her]." Transcript at 20. Claimant suggested that some other employee could have made these entries while she was momentarily away from her desk, and testified that other employees accessed her computer "five to six times a week" for reasons other than using QuickBooks, which claimant alone was tasked with using. Transcript at 20-21. The employer did not rebut that other employees had such access to claimant's computer.

However, the employer provided logs that showed claimant's computer was used to make routine entries in QuickBooks, unrelated to the missing deposits, two, three, four, and six minutes after the February 27, 2024, alteration occurred. Exhibit 1 at 8, 11. Claimant did not rebut this evidence or offer a plausible explanation for why any other employee would make routine QuickBooks entries unrelated to the missing deposits, which were claimant's sole responsibility. Therefore, more likely than not, claimant made these routine entries, including one that was made only two minutes after the alteration she denied making.

Furthermore, the employer provided logs that showed claimant's computer was used to make the original QuickBooks entry for the July 24, 2024, End of Day Report on August 8, 2024, which falsely stated that no cash was received that day. Exhibit 1 at 12. Claimant dated and initialed that End of Day Report, signifying that she had entered the information from it into QuickBooks on August 8, 2024. Exhibit 1 at 4. Additionally, the logs showed that claimant's computer was used to make routine entries in QuickBooks, unrelated to the missing deposits, two minutes before and six minutes after the entry for July 24, 2024. Exhibit 1 at 12. Claimant did not rebut this evidence.

As no one but claimant had reason to make the unrelated entries shortly before and after the entry in question, it can reasonably be inferred that claimant would not have dated and initialed an acknowledgement that she had made the July 24, 2024, End of Day Report QuickBooks entry if she had not personally made that entry. The record therefore shows that claimant, more likely than not, made that false entry. In light of all the other circumstances surrounding the missing envelopes, it is more

likely than not that claimant made the false entry to conceal that she had taken the envelope containing the July 24, 2024, cash receipts and appropriated it to her own use. Accordingly, the employer has shown by a preponderance of the evidence that claimant willfully violated the employer's reasonable expectations that she not misappropriate their funds or create false bookkeeping entries.

Moreover, claimant's conduct was not an isolated instance of poor judgment. Though the record shows by a preponderance of the evidence that claimant misappropriated at least one envelope of cash receipts and made at least one false bookkeeping entry the following month, even a single instance of misappropriation or concealment exceeded mere poor judgment both by being unlawful and creating an irreparable breach of trust in the employment relationship.³ An act of theft or similar dishonesty by an employee who holds a position of trust, as claimant did, creates such a breach. *See Levu v. Employment Department*, 149 Or App 29, 941 P2d 1056 (1997). Accordingly, claimant's actions were not an isolated instance of poor judgment, and she was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective October 6, 2024.

DECISION: Order No. 25-UI-285666 is set aside, as outlined above.

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

DATE of Service: April 18, 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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³ *See* ORS 165.080, which provides in relevant part: "A person commits the crime of falsifying business records if, with intent to defraud, the person [m]akes or causes a false entry in the business records of an enterprise; or [a]lters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise . . ." ORS 165.080(1)(a) and (b); *See* ORS 165.095(1), which provides: "A person commits the crime of misapplication of entrusted property if, with knowledge that the misapplication is unlawful and that it involves a substantial risk of loss or detriment to the owner or beneficiary of such property, the person intentionally misapplies or disposes of property that has been entrusted to the person as a fiduciary or that is property of the government or a financial institution."



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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