

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0176**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 15, 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 September 15, 2024 (decision # L0008745079).<sup>1</sup> Claimant filed a timely request for hearing. On February 21, 2025, ALJ Hall conducted a hearing, and on February 27, 2025, issued Order No. 25-UI-284375, reversing decision # L0008745079 by concluding that claimant's discharge was not for misconduct and did not disqualify claimant from receiving benefits. On March 19, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Grover Electric and Plumbing Supply Co. employed claimant as a salesperson from March 28, 2023, to September 18, 2024.

(2) The employer maintained an attendance policy that required employees to notify the employer of unplanned absences or tardies "before 8:00 a.m. on the day you expect to be absent or tardy." Transcript at 6. The policy also required that the employee speak directly to a manager, assistant manager, or department head by phone to report the absence, rather than by any other means. This requirement was, in part, because that the employee's supervisor "must make a judgment about whether to call in a replacement and determine if work schedules for other days will be affected. So they need to know approximately how many days you will be absent." Transcript at 6–7. At the time of hire, the employer provided new employees with a handbook containing this policy and required them to read it. Claimant

<sup>1</sup> Decision # L0008745079 stated that claimant was denied benefits from September 22, 2024, to September 20, 2025. However, as decision # L0008745079 found that claimant was discharged on September 18, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 15, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

generally understood this policy. Despite the wording of the policy, the employer permitted employees to have someone else call in on their behalf if they were incapacitated or otherwise unable to call.

(3) On April 30, 2024, the employer issued claimant a warning for having violated the attendance policy by being late for work several times.

(4) On or around September 10, 2024, claimant became ill with a respiratory infection. On or around September 11, 2024, claimant visited a doctor, who diagnosed him with COVID-19 and pneumonia.

(5) On September 13, 2024, claimant worked his final shift for the employer. On the same day, the employer issued claimant a final written warning because claimant had been late or absent on a number of occasions that month.

(6) On September 14, 2024, claimant was absent from work because he was ill. Claimant was scheduled off of work on September 15 and 16, 2024.

(7) On September 17, 2024, claimant was absent from work due to his continued illness. At that time, claimant's symptoms were so severe that he had difficulty breathing, could not swallow solid foods, could not get out of bed, and had lost his voice. As such, claimant's mother called the employer on his behalf that day and notified them that "it was going to be a couple days before [claimant] came back to work." Transcript at 24.

(8) On September 18, 2024, claimant was again absent from work, as he continued to suffer from the same symptoms of his illness. Neither claimant nor his mother contacted the employer that day to notify them of claimant's absence, as claimant believed that his mother's phone call the prior day was sufficient to comply with the attendance policy. Nevertheless, the employer considered claimant's failure to contact them regarding his absence that day to be a violation of the attendance policy, and discharged him that day.

**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).

Absences due to illness or other physical or mental disabilities is not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because he was absent from work on September 18, 2024, and did not call the employer to notify them of his absence that day, allegedly in violation of their attendance policy. As a preliminary matter, the record shows that the employer had previously issued claimant warnings for alleged violations of their attendance policy. However, September 18, 2024, was the last date on which claimant allegedly violated that policy, and the record shows that the employer made the decision to discharge claimant on the same day after he did not come to work. As such, the circumstances surrounding claimant's absence from work on September 18, 2024, are the proper focus of the analysis as to whether claimant was discharged for misconduct. *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).

To the extent that the employer discharged claimant for the absence itself on September 18, 2024, the absence was due to illness, and therefore was not misconduct under OAR 471-030-0038(3)(b). The record suggests, however, that the employer's greater concern was with claimant's failure to notify them on September 18, 2024, that he would be absent that day. To the extent the employer discharged claimant for this reason, it also was not misconduct, as the employer did not show by a preponderance of the evidence that claimant actually violated their attendance policy by failing to notify them on the same day that he was going to be absent.

On September 17, 2024, claimant's mother contacted the employer on his behalf to notify them that claimant would be absent that day because he was ill. The parties offered conflicting accounts of what claimant's mother told the employer that day. The employer testified that claimant's mother told the employer only that claimant had "cough and congestion," and did not tell them that he would be out for more than a single day. Transcript at 33. By contrast, claimant testified that his mother told the employer "[t]hat it was going to be a couple days before [claimant] came back to work." Transcript at 24. The employer's account was hearsay, as it was offered based on notes from a manager who did not testify at the hearing. Transcript at 33. It is unclear whether claimant was present for the phone call between his mother and the employer. Assuming that both accounts were hearsay, the evidence on this point is still no more than equally balanced. As the employer bears the burden of proof in a discharge case, the facts on this point have been found in accordance with claimant's account.

The record shows the employer's attendance policy required employees to notify them of absences prior to 8 a.m. on the date they would be absent. Based on the text of the policy, this requirement was arguably fulfilled regarding claimant's September 18, 2024, absence because claimant (via his mother) notified the employer of the absence the day *prior*. Although the employer's decision to discharge claimant appears to be due to claimant's failure to notify them of his absence on the day the absence itself took place, the text of the policy is somewhat ambiguous, requiring only that employees notify the employer "before 8:00 a.m. on the day [they] expect to be absent or tardy." Further, the policy specifically stated that advance notice of absences are necessary because the supervisor "must make a judgment about whether to call in a replacement and determine if work schedules for other days will be affected. So they need to know approximately how many days you will be absent." Transcript at 6-7. This shows that the employer's policy was intended to permit employees to notify them of absences that were to occur on a later date, as claimant did.

Thus, because claimant gave the employer notice on September 17, 2024, of his absence for the following day, claimant complied with the notice requirements in the attendance policy regarding his absence on September 18, 2024, and was discharged for a reason that did not violate the employer's standards of behavior. Claimant therefore 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-284375 is affirmed.

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

**DATE of Service:** April 22, 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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