EO: Intrastate
BYE: 06-Dec-2025

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

284
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0180

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 30, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective November 17, 2024 (decision # L0007867658).[1] Claimant filed a timely request for hearing. On March 4, 2025, ALJ Bender conducted a hearing, and on March 12, 2025, issued Order No. 25-UI-285815, reversing decision # L0007867658 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On March 20, 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) Salem Academy, Inc. employed claimant as a custodian from September 11, 2023, through November 17, 2024. Claimant worked Monday through Friday, 2:30 p.m. to 11:00 p.m.

(2) The employer expected their employees to report for work on time and remain at work through the scheduled end of their shift unless otherwise excused, and not be absent from work without prior notice. The employer also expected their employees to clock out when not working, except during two 15-minute breaks per shift. The employer also expected their custodians to park only in designated areas,

[1] Decision # L0007867658 stated that claimant was denied benefits from November 17, 2024 to December 6, 2025. However, decision # L0007867658 should have stated that claimant was disqualified from receiving benefits beginning Sunday, November 17, 2024 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

carry radios while working, and complete checklists of required activities during their shifts. Claimant understood the employer's expectations.

(3) On October 18, 2024, the employer warned claimant for "frequently" being late to work and leaving early since at least October 1, 2024, and for failing to park in a designated area, carry a radio at all times, and complete work on a checklist. Exhibit 2 at 3.

(4) On October 30, 2024, claimant used the employer's computer system to request November 15, 2024, off from work. If the employer approved or denied a request for time off, the system sometimes emailed the requesting employee to tell them this, and approved time off was automatically reflected on the employee's timesheet in the system. Claimant had never before received an acknowledgement email when his requests for time off were approved, and was unaware that he was expected to check his timesheet if he did not receive other indication of approval. The employer had told claimant that if a time off request was submitted "around 14 days" in advance it "should be good." Transcript at 21. Claimant did not receive an e-mail or other response to the request to have November 15, 2024, off work, and therefore believed that it had been approved. The employer did not approve claimant's request in the system or otherwise notify him of a decision.

(5) Following the October 18, 2024, warning, the employer felt that claimant's attendance did not improve. On October 31, 2024, they issued another warning to claimant regarding his attendance. Specifically, it cited that on October 28, 29, and 30, 2024, claimant had been granted permission from his supervisor to leave work for approximately 40 minutes during each shift, which he did. The employer's attendance system did not show claimant clocked out for these periods, which the employer considered a violation of their attendance policy.

(6) From November 4, 2024, through November 14, 2024, claimant was scheduled to work eight days. Claimant was late to work each of those days, and on six of the eight days claimant left work prior to the scheduled end of his shift. On November 14, 2024, the employer again warned claimant about his attendance.

(7) On Friday, November 15, 2024, claimant did not report for work because he believed that his October 30, 2024, request for time off that day had been approved. Claimant did not otherwise attempt to notify the employer that he would be absent that day.

(8) On Monday, November 18, 2024, the employer discharged claimant for what they considered his absence without notice on November 15, 2024, and numerous previous attendance policy violations for which he had already been warned.

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).

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 asserted that they discharged claimant based on a "culmination of. . . several things," largely relating to attendance, but also concerning other points of dissatisfaction with his work. Transcript at 6. However, the initial focus of the discharge analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did.[2] *See, e.g., Appeals Board Decision* 09-AB-1767, June 29, 2009. The last occurrence of an attendance policy violation is considered the reason for the discharge when multiple violations are alleged. *See generally* June 27, 2005, Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division.

Claimant's absence on November 15, 2024, was the last occurrence of an alleged attendance policy violation. One of the employer's witnesses testified, "[T]he last day, [claimant] didn't show up to work. And I think that was the decision that [a manager] made to. . . terminate him at that point because there

[2] Only if the proximate cause of discharge is found to be a willful or wantonly negligent violation of a reasonable employer expectation does the analysis consider prior alleged violations of policy to determine whether OAR 471-030-0038(3)(b) is applicable.

was a . . . no call/no show." Transcript at 17. Further, the record suggests that on November 14, 2024, the employer had elected to warn claimant, rather than discharge him, for the alleged attendance and other policy violations that had occurred on or before that date. *See* Exhibit 2 at 3. For these reasons, claimant's absence on November 15, 2024, was likely the proximate cause of his discharge and therefore is the initial focus of the discharge analysis.

The employer reasonably expected that their employees would not be absent from work without notice. Claimant understood this expectation. The parties agreed that claimant was regularly scheduled to work on Fridays, and that claimant did not report for work on Friday, November 15, 2024. A manager testified that claimant had not been excused from work that day and had not provided notice that he would be absent. Transcript at 17. Another manager testified that when an employee requests time off through the employer's computer system, "Normally they get a response via email automated from the system. But like I said, if they don't get one, when they log in, their timesheet will be populated with the time that's reflected off." Transcript at 32. That manager was then asked if there were times when the automated email notification failed to work, and he replied, "I don't know. . . it's through a major payroll company." Transcript at 32.

In rebuttal, claimant testified that on October 30, 2024, he requested November 15, 2024, off using the employer's computer system, and submitted a screenshot of the request as evidence. Transcript at 22; Exhibit 1 at 19. Claimant further testified that a manager had told him that if a time off request was submitted "around 14 days" in advance it "should be good." Transcript at 21. Claimant explained that he had "never received any. . . confirmation or denial" by email in response to prior requests for time off. Transcript at 22-23. It can reasonably be inferred that because claimant submitted his request within the proper timeframe and received no notice from the employer that the request had been denied, he believed that the request was approved, and that no further investigation of the status of the request was needed. Claimant therefore provided no additional notice to the employer that he would be absent on November 15, 2024.

The employer did not contest that claimant made the October 30, 2024, request, but maintained, "If you put in a request for time off. . . it's your responsibility to check. . . whether that date and time has been given or not." Transcript at 33. However, the record does not show that claimant knew or should have known of this expectation, particularly in light of his prior experiences requesting time off. Further, the employer did not demonstrate that claimant acted with indifference to the employer's interest, as he timely requested the day off and received no indication that the request had been denied, which in his experience was consistent with the employer approving the request. Therefore, to the extent claimant failed to realize his request for time off had not been granted, this amounted to, at most, ordinary negligence. Accordingly, the employer has not shown by a preponderance of the evidence that the proximate cause of claimant's discharge was a willful or wantonly negligent violation of their attendance policy, and that he therefore was 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-285815 is affirmed.

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

DATE of Service: April 23, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
Email: *appealsboard@employ.oregon.gov*
Website: *www.Oregon.gov/employ/pages/employment-appeals-board.aspx*