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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0181

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 4, 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 October 20, 2024, through October 18, 2025 (decision # L0007013163). Claimant filed a timely request for hearing. On March 3, 2025, ALJ Micheletti conducted a hearing, and on March 11, 2025, issued Order No. 25-UI-285614, modifying decision # L0007013163 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective October 13, 2024.[1] On March 17, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted four written arguments, as follows: on March 17, 2025, a seven-page narrative; on March 26, 2025, a two-page email, enclosing an additional eleven pages of documents; a second email on March 26, 2025, enclosing a certificate of service and a duplicate of the March 17, 2025, narrative; and on March 27, 2025, an additional one-page narrative enclosing duplicates of the prior narrative, certificate of service, and eleven pages of documents.

EAB did not consider claimant's March 27, 2025, written argument because he did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, all of claimant's arguments contained information that was not part of the hearing record. In his first March 26, 2025, written argument, claimant requested that some of this additional evidence, the eleven pages of documentation enclosed with that argument, be received into the record. Claimant's First March 26, 2025, Written Argument at 1. Claimant's request is denied.

Those documents consist of "rework tags" relating to a work process that claimant took issue with during his employment (as discussed in more detail in the Findings of Fact, below), which claimant asserted was "directly relevant and material to [his] appeal, demonstrating the factual basis for the

[1] Although Order No. 25-UI-285614 stated it affirmed decision # L0007013163, it modified that decision by disqualifying claimant from October 13, 2024, and until he requalified under Employment Department law. Order No. 25-UI-285614 at 3.

quality control concerns [he] raised, which the employer characterized as misconduct." Claimant's First March 26, 2025, Written Argument at 1; 3–12. Despite claimant's assertion, this information is not relevant and material to EAB's determination of whether claimant was discharged for misconduct because, as explained below, the outcome in this matter does not turn on whether claimant's frustration with the process in question, or the employer's manner of addressing it, was justified. Thus, under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019), EAB did not consider those documents when reaching this decision. Additionally, to the extent that claimant's written arguments contained other information not in the hearing record besides the eleven pages of documents, claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering that information during the hearing.

For the above reasons, under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's first three arguments (submitted on March 17 and 26, 2025) that were based on the hearing record.

FINDINGS OF FACT: (1) Ascentron, Inc. employed claimant June 24, 2020, to October 14, 2024. The employer's business consisted of "contract manufacturing," and claimant worked in their quality control department. Transcript at 4.

(2) The employer maintained a written "workplace violence" policy which forbade, in relevant part, "fighting, threatening, or disrupting the work of others." Transcript at 6–7. The employer provided claimant with a copy of this policy when he was hired, and claimant understood it.

(3) Claimant was primarily responsible for managing "consigned stock," meaning manufactured parts obtained from another company, within the employer's quality control department. Transcript at 25–26. Because many of these parts were sensitive to moisture, proper handling of the stock required careful management of the chain of custody for each one, so as to track, among other things, whether they had been "baked" to control for moisture. Transcript at 26. The employer's receiving department was responsible for maintaining the chain of custody so that the quality control department would know, upon receiving stock from them, whether a part had been "baked" and was ready for inspection by claimant's department. On "at least 67 occasions" during his course of employment, however, claimant received stock from the receiving department which lacked proper chain-of-custody documentation. Transcript at 26. Each time this happened, claimant would have to "bake" the parts he received before inspecting them, which could set back his inspection schedule by up to a month. Claimant was frustrated by this recurring problem, and complained to his manager about it "on at least five occasions," but it persisted despite the complaints. Transcript at 28.

(4) On October 3, 2024, claimant was involved in a disagreement with the employer's stockroom team lead regarding the "baking" process. Transcript at 10. The stockroom lead had asked claimant why he had marked some stock as needing to be "baked" when they had labels that she believed indicated they had already been "baked." In response, claimant "started yelling [that] she is doing this all wrong, and I don't know why you guys allow it." Transcript at 32. The stockroom lead then walked away as claimant continued to yell at her. Two other nearby employees then "told [claimant] to calm down," after which claimant "blew up at" the two other employees, waved his arms around in the air, and ultimately "yelled, '[F]uck this. I'm going home'" before leaving the premises. Transcript at 32–33.

(5) On October 8, 2024, after receiving a complaint from the stockroom lead, claimant's manager and the human resources manager called claimant into an office to discuss the October 3, 2024, incident. During the meeting, the managers presented claimant with a written warning for violating their policy by being "verbally aggressive towards another employee" during that incident. Transcript at 7. Upon receiving the write-up, claimant "became increasingly agitated and began to elevate his voice to the point where he could be heard through closed doors[.]" Transcript at 7. Claimant also continued to express his frustration with the process that was the basis for his disagreement with the stockroom lead, although the managers attempted to redirect the discussion towards claimant's demeanor during the October 3, 2024, incident. As the meeting progressed, claimant used profanity such as "[f]uck, shit, [and] goddamn" while speaking with the managers, and "stood up waving his arms." Transcript at 18. This caused the human resources manager to become "a little worried that [she and claimant's manager] were in this closed room with" claimant. Transcript at 18. Because of claimant's demeanor during the meeting, and the human resources manager's concern that his demeanor was causing other employees to fear for their safety, the managers escorted claimant from the premises, and told him that they would investigate further before determining whether to allow him to return to work. As the managers escorted claimant from the premises, claimant "managed to start yelling in the production area." Transcript at 16.

(6) After the October 8, 2024, meeting, claimant's manager conducted an investigation into claimant's conduct, and "several employees" in claimant's area told the manager that claimant had been "doing this the whole entire time he's been employed with [the employer]." Transcript at 16. Prior to the October 3, 2024, incident, management was not aware of any concerns regarding claimant's manner of interacting with other employees.

(7) On October 14, 2024, after investigating claimant's conduct, the employer discharged claimant for having violated their policy during and after the October 8, 2024, meeting.

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).
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> (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 he violated their policy prohibiting "fighting, threatening, or disrupting the work of others" by acting in an aggressive manner. There are two separate incidents described in the record in which claimant behaved in this manner: the October 3, 2024, incident with the stockroom lead, and the October 8, 2024, meeting in which claimant was given a write-up for the earlier incident. The record also shows that the employer learned of allegations that claimant had behaved similarly on a number of other occasions, although the record lacks any details of these other occasions. As such, it is necessary to determine which of these were the proximate cause of the employer's decision to discharge claimant. *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).

At hearing, claimant's manager testified that the final incident which led the employer to discharge claimant was claimant's conduct on October 8, 2024. Transcript at 7. However, the employer also effectively suspended claimant for nearly a week after this incident occurred pending an investigation into claimant's conduct, discovered evidence that he had behaved similarly on other occasions, and then discharged him after that investigation concluded. Therefore, it is reasonable to conclude that the reports of similar conduct that the employer learned of during the investigation were also proximate causes of the decision to discharge claimant, in addition to the October 8, 2024, incident.

As noted, the record contains insufficient evidence to show what claimant allegedly did during the other incidents reported to the employer during the investigation following the October 8, 2024, meeting. Therefore, the employer has not met their burden to show that any of that alleged conduct constituted willful or wantonly negligent violations of the employer's policy. Nevertheless, the record shows that claimant's conduct on October 8, 2024, which was also a proximate cause of his discharge, was misconduct.

The subject of the October 8, 2024, meeting was claimant's conduct on October 3, 2024, in which he had angrily confronted another employee because of a disagreement over one of the employer's production processes. During the meeting, in which the managers present gave claimant a write-up for his prior behavior, claimant, rather than engaging with the managers on the subject of the meeting itself, instead continued to argue about the disagreement over the production process. This included the use of foul language towards the employer, standing up and waving his arms, and raising his voice such that he could be heard through the closed office door. This conduct continued to the production floor, where other employees could presumably hear claimant, as the managers escorted him off of the premises. The human resources manager testified that she told claimant that they sent him home because "it's not safe for other people or if they're scared, listening to him being so aggressive." Transcript at 16.

The employer's policy forbade "fighting, threatening, or disrupting the work of others." Given how broad this wording is, it is not clear that claimant's argumentative conduct constituted either "fighting" or "threatening," despite the human resources manager's testimony suggesting that she herself felt threatened. However, claimant's conduct almost certainly disrupted the work of others, as he was yelling loudly enough that others could hear him through a closed door, concerned the human resources manager enough that she decided that he should leave the premises, and continued with the behavior as he was being escorted out. Additionally, the record shows that claimant was aware of and understood the employer's policy, and that the employer had just met with him to discuss that type of behavior. Therefore, claimant's conduct violated the policy with at least wanton negligence.

Claimant's continuation of the angry and aggressive behavior as he was escorted from the premises also shows that a continued employment relationship was likely impossible. To be clear, the employer did not rebut claimant's assertions that there was an unresolved problem with the production process that had been the source of claimant's frustrations and disagreements. However, during the meeting, claimant seemingly refused to engage with the employer's concerns about how he interacted with others in favor of continuing to focus on his own work frustrations, and, both during and after the meeting, he further exhibited the same type of conduct that had led to the write-up in the first place. This shows that claimant was, more likely than not, unwilling to address his own problematic behavior and employ calmer, more respectful conflict-resolution tactics that would not disrupt the workplace. The employer could not have reasonably continued employing claimant after learning this, because conflicts in the workplace will almost inevitably occur at some point or another, and claimant's refusal to address them in a non-disruptive manner would have had a persistent negative effect on other employees. Because a continued employment relationship with claimant was likely impossible, claimant's conduct on October 8, 2024, likely exceeded mere poor judgment and therefore was not an isolated instance of poor judgment.

However, even if claimant's conduct on October 8, 2024, did not exceed mere poor judgment, it still cannot be excused as an isolated instance of poor judgment because claimant's conduct on October 3, 2024, also was a willful or wantonly negligent violation of the employer's standards of behavior, and his conduct on October 8, 2024, therefore was a repeated act.

Regarding that prior incident, there is some conflict in the record as to the extent of claimant's conduct that day. At hearing, claimant testified only that in response to the stockroom lead's statement regarding the process they were discussing, claimant stated, "[T]his is bullshit," and then walked outside to calm himself down. Transcript at 27. The human resources manager rebutted this, testifying that claimant

continued yelling "louder and louder" as the stockroom lead walked away from claimant, that two other employees attempted to calm claimant down, and that claimant then "stood up throwing his arms and yelling" at those two employees before saying, "[F]uck this. I'm going home." Transcript at 32–33. Neither of the employer's witnesses were present for the October 3, 2024, incident, and the employer's testimony regarding the incident is therefore based on the hearsay accounts of five employees who were present for the incident. Transcript at 17. While first-person accounts are entitled to greater weight than hearsay, the human resources manager testified that all five of the witnesses to the October 3, 2024, incident confirmed what the stockroom lead had stated in her complaint. Transcript at 17. Thus, as all five statements are apparently in accord with each other, the combined weight of these five hearsay statements outweigh claimant's testimony, and the facts have been found in accordance with the employer's account.

As was the case with the October 8, 2024, incident, claimant was aware of the employer's policy forbidding conduct that disrupted the work of others. Claimant therefore knew or had reason to know that angrily yelling at a coworker over a disagreement about work, continuing to yell at her as she walked away, and then yelling and waving his arms at two *other* coworkers as they tried to calm him down would violate the employer's policy. Because claimant conducted himself as such without apparent regard for the consequences of his conduct, he violated the employer's policy on October 3, 2024, with at least wanton negligence.

Because claimant's conduct on October 3, 2024, was a willful or wantonly negligent violation of the employer's policy, his similar behavior five days later was a repeated act, and therefore not an isolated instance of poor judgment. The employer therefore discharged claimant for misconduct, and claimant is disqualified from receiving unemployment insurance benefits effective October 13, 2024.

DECISION: Order No. 25-UI-285614 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, 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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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.

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