

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0185

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 22, 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 August 4, 2024 (decision # L0006709804).¹ Claimant filed a timely request for hearing. On March 4, 2025, ALJ Murray conducted a hearing at which the employer failed to appear, and on March 7, 2025, issued Order No. 25-UI-285324, affirming decision # L0006709804. On March 20, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant’s argument in reaching this decision.

FINDINGS OF FACT: (1) Space Age Fuels, Inc. employed claimant as an accounting clerk from March 9, 2020, through August 6, 2024.

(2) The employer expected that their employees would not use “profanity” or engage in “emotional outburst[s]” in the workplace. Transcript at 10, 14. Claimant was aware of this expectation after February 12, 2024.

(3) On October 26, 2021, claimant received a warning for “[f]ailure to follow instructions and disruptive attitude.” Transcript at 12-13. Claimant believed that the warning was undeserved and the result of his

¹ Decision # L0006709804 stated that claimant was denied benefits from August 4, 2024 to October 4, 2025. However, decision # L0006709804 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 4, 2024 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

supervisor asking him to perform tasks that he had not been trained for, and because claimant had sought additional instruction.

(4) On February 12, 2024, claimant received a warning for having “periodic outbursts” at his desk where he would “talk angrily to. . . [and] swear at” his computer. Transcript at 9. Claimant had been unaware prior to that time that using foul language in the workplace was not allowed because other coworkers frequently used such language. Claimant had also been unaware that his private “outbursts” bothered his coworkers, whom he believed were listening to music through earphones and not paying attention to what he said or did while alone at his desk. Claimant’s coworkers continued to use foul language “very freely” around him following this warning, but claimant stopped using such language. Transcript at 21.

(5) On August 5, 2024, claimant’s computer “froze up,” causing him to lose work by having to restart it. Transcript at 15. Claimant was “frustrated” by this problem and “slammed down” his computer keyboard. Transcript at 18. Claimant did not use foul language. Immediately after having “slammed down” the keyboard, claimant realized that what he had done was “wrong.” Transcript at 22. Claimant “jumped up” from his chair, then sat down and put his “face in [his] hands as [he] was realizing that [he] felt bad already” and feared being discharged. Transcript at 22. Claimant spoke with his supervisor about the incident, who “assured” him that he would not be discharged. Transcript at 22.

(6) On August 6, 2024, the employer discharged claimant for his actions the previous day. The employer gave claimant a letter stating that he was being discharged based on their belief that he had “used. . . profanity and slammed down [his] keyboard causing distress.”² Transcript at 14.

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.

² This belief was likely based, in part, on the report of a coworker who wrote, without reference to claimant using profanity, that he slammed the keyboard down, and “[a]fter he threw his arms up a bit he went down and sat in his chair for a few seconds. And put his head. . . in his hands.” Transcript at 17.

(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 of an "outburst" that occurred on August 5, 2024. The employer expected that their employees would not use "profanity" or engage in "emotional outburst[s]" in the workplace. Transcript at 10, 14. Claimant had been unaware of this expectation prior to February 12, 2024, because he and his coworkers had regularly used foul language in the workplace without objection from the employer, and because he believed his coworkers were unaware of, or unbothered by, his angry reactions toward his computer while alone at his desk. However, after receiving a warning on February 12, 2024, claimant was aware of the employer's expectation regarding these behaviors.

The order under review concluded that claimant acted with wanton negligence because he "knew or should have known that his actions [on August 5, 2024] would violate the employer's reasonable expectation" since he "immediately knew this could be the final incident which would lead to a discharge" and expressed that concern to his supervisor. Order No. 25-UI-285324 at 3. The record does not support that claimant acted with wanton negligence.

Claimant testified that he became "frustrated" at the loss of his work when his computer suddenly froze, and that he "slammed down" his computer keyboard. Transcript at 18. Claimant was asked at hearing if he was "aware that [he was] doing anything wrong," and he testified, "[Y]es. . . I did acknowledge that immediately. That's why I jumped up. Stood on my chair; then sat down. And put my. . . face in my hands as I was realizing that I felt bad already." Transcript at 22. This testimony suggests that claimant was not acting consciously when he "slammed down" the keyboard, and considered the potential consequences of his actions only after realizing what he had reflexively done. As such, the employer has not shown by a preponderance of the evidence that claimant acted willfully or with wanton negligence on this occasion.

Moreover, even if claimant had acted consciously and with disregard for the employer's interest on this occasion, his actions constituted an isolated instance of poor judgment, which is not misconduct. To the extent claimant's actions on August 5, 2024, involved the conscious exercise of judgment, it was poor

judgment. Claimant's actions did not exceed mere poor judgment, as they were not unlawful or tantamount to unlawful conduct, did not create an irreparable breach of trust in the employment relationship, and did not otherwise make a continued employment relationship impossible. Therefore, the question of whether claimant's actions on August 5, 2024, fall within the provisions of OAR 471-030-0038(1)(d) turns on whether the actions constituted an isolated act.

The record shows that claimant received a warning from the employer on October 26, 2021. However, given how much time passed between this warning and August 5, 2024, this is not sufficient to show that claimant's actions on August 5, 2024, were part of a pattern of other willful or wantonly negligent conduct. Further, claimant denied the allegations in the warning at hearing, which the employer did not rebut. *See* Transcript at 13-14.

Claimant also received a warning on February 12, 2024, approximately six months prior to the final incident. Claimant received this warning for having used foul language and engaged in "outbursts," both of which claimant admitted to at hearing. Transcript at 9, 21. Claimant maintained, however, that he was unaware the employer had expected him not to engage in this behavior, as foul language was "very much being used freely around [him]," and he was "under the assumption that everyone in their workspace was wearing. . . earbuds and just listening to their music the whole time [a]nd not. . . documenting every outburst that [he] was doing quietly." Transcript at 21. As the employer had not objected to this conduct for the first approximately four years of claimant's employment, claimant did not have reason to know of the employer's expectation regarding the use of foul language, or having private outbursts at his desk, prior to the February 12, 2024, warning. Therefore, the employer has not shown that claimant acted willfully or with wanton negligence on that occasion. The August 5, 2024, final incident was therefore isolated, rather than part of a pattern of other willful or wantonly negligent conduct. Accordingly, even if claimant acted with wanton negligence on August 5, 2024, it was an isolated instance of poor judgement, which is not 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-285324 is set aside, as outlined above.

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

DATE of Service: April 22, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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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