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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0194

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 17, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits beginning March 31, 2024 (decision # L0004189416). On June 6, 2024, decision # L0004189416 became final without claimant having filed a request for hearing. On June 9, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 2, 2024, issued Order No. 24-UI-257933, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 16, 2024. On July 15, 2024, claimant filed a timely response to the appellant questionnaire. On September 16, 2024, ALJ Fraser conducted a hearing, and on September 17, 2024, issued Order No. 24-UI-266429, re-dismissing claimant's request for hearing as late without good cause and leaving decision # L0004189416 undisturbed. On October 2, 2024, claimant filed an application for review of Order No. 24-UI-266429 with the Employment Appeals Board (EAB).

On October 22, 2024, EAB issued EAB Decision 2024-EAB-0698, reversing Order No. 24-UI-266429 by allowing claimant's late request for hearing, and remanding the matter for a hearing on the merits of decision # L0004189416. On November 13, 2024, ALJ Christon conducted a hearing at which the employer failed to appear, and on November 18, 2024, issued Order No. 24-UI-273711, reversing decision # L0004189416 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On November 18, 2024, the employer filed a timely request to reopen the November 13, 2024, hearing. On December 31, 2024, ALJ Chiller conducted a hearing, and on January 3, 2025, issued Order No. 25-UI-278757, denying the employer's request to reopen and leaving Order No. 24-UI-273711 undisturbed. On January 16, 2025, the employer filed an application for review of Order No. 25-UI-278757 with EAB. On February 20, 2025, EAB issued EAB Decision 2025-EAB-0045, reversing Order No. 25-UI-278757 by allowing the employer's request to reopen the November 13, 2024 hearing, and remanding the matter for a re-hearing on the merits of decision # L0004189416.

On March 7, 2025, ALJ Chiller conducted a hearing, and on March 10, 2025, issued Order No. 25-UI-285495, again reversing decision # L0004189416 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On March 28, 2025, the employer filed an application for review of Order No. 25-UI-285495 with EAB.

WRITTEN ARGUMENTS: Claimant filed written arguments on March 29 and March 31, 2025. EAB did not consider either of claimant's written arguments because they did not state that claimant provided a copy of the arguments to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, claimant's March 31, 2025 argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond her reasonable control prevented her from offering the information into the hearing record as required by OAR 471-041-0090 (May 13, 2019).

The employer filed a written argument on March 28, 2025,[1] which also contained information that was not part of the hearing record. In particular, the argument asserted that the order under review "stated that copies of [the employer'] HR policies and [claimant]'s Performance Improvement Plan (PIP) were 'not provided,' despite these documents being extensively discussed during the [hearing] and having been submitted as evidence for the initial July 2024 [hearing]," and then requested admission of those documents, copies of which were included with the argument. Employer's Written Argument at 1. The employer's request is denied.

It is not clear which hearing the employer was referring to in the above statement, as the first of the four hearings in this matter occurred in September 2024. Regardless, the record in this matter does not show that the employer submitted, or attempted to submit, these documents prior to March 28, 2025. The employer also has not shown that factors or circumstances beyond their reasonable control prevented them from offering the information into the hearing record as required by OAR 471-041-0090, and EAB therefore has not admitted the employer's newly-submitted documents into the record.

EAB considered any parts of the employer's argument that were based on the hearing record. The employer should note that while EAB has not admitted these documents into the record, the employer's *testimony* regarding the contents of these documents remains in the record, and EAB has considered that testimony when reaching this decision.

FINDINGS OF FACT: (1) Robbie Bahl, MD employed claimant from August 8, 2022 through April 5, 2024. Claimant worked as a psychiatric nurse practitioner at the employer's clinic and reported to the clinic's owner, who served as the medical director.

(2) Prior to working for the employer, claimant received diagnoses for complex post-traumatic stress disorder (cPTSD) and attention deficit hyperactivity disorder (ADHD). Claimant also suffered from anxiety.

[1] The employer filed *two* written arguments, both on March 28, 2025—one an enclosure with the application for review filed by mail, and another by fax. The faxed written argument, however, is a duplicate of the argument enclosed with the application for review. Therefore, for the sake of clarity, the employer's written argument is referred to in the singular.

(3) The employer maintained a written policy which contained a "blanket professionalism statement… [regarding] professional communication and respect towards patients and staff." Transcript at 9–10. All employees were required to review this policy at hire.

(4) At some point in 2023, claimant began experiencing troubling health symptoms that she was initially unable to explain. Claimant eventually came to believe that she had a parasitic infection, but found that asserting such a belief caused medical professionals and others to become concerned about her mental state. The combination of the discomfort of this condition, the lack of a diagnosis, and the skepticism of the medical providers who had evaluated her exacerbated claimant's pre-existing mental health conditions.

(5) On several occasions between May 2023 and March 2024, claimant engaged in conduct which violated the employer's expectations. Most of these violations related to claimant's attendance, but some related to other concerns, such as speaking to patients and other employees about her own personal and medical issues.

(6) On July 13, 2023, claimant "had an acute mental health episode" while at work. Exhibit 7 at 2. On that day, claimant "arrived to work with a shaved head [which she] stated was due to a rash," and "then asked the office manager for the Medical director to help get the '…worms out from beneath the skin of her head.'" Exhibit 7 at 2. Claimant also "asked the office manager for a knife to cut the worm out from beneath her skin," and "stated she would rather be dead than live with these parasites beneath her skin." Exhibit 7 at 2. The employer contacted the county's crisis team, who arrived shortly thereafter. The crisis team tried to convince claimant to be evaluated at an emergency room, but claimant refused to go with them and left the clinic. Following this incident, the employer placed claimant on leave "pending a psychiatric evaluation clearing her to return to work." Exhibit 7 at 2. Claimant was subsequently placed on an antipsychotic medication.

(7) On August 10, 2023, while claimant was on medical leave, the employer issued claimant a performance improvement plan (PIP) which contained two conditions that claimant was required to meet in order to continue her employment with the employer: that claimant "refrain from sharing personal details about herself and her medical issues with staff and patients," and that she "submit a quarterly letter from her psychiatrist, clearing her to return to work safely." Exhibit 7 at 2. Claimant signed the PIP in September 2023 and was aware of these requirements.

(8) On November 5, 2023, claimant returned to work after having been cleared to do so by her psychiatrist. Claimant continued to struggle with her symptoms, and related feelings of isolation, during that time.

(9) Also in November 2023, "B," one of the other nurse practitioners on staff, gave claimant her personal phone number and offered to lend claimant support for the difficulties that claimant had been experiencing. Exhibit 1 at 2. Because of her feelings of isolation and other related mental health symptoms and the ongoing medical issue, claimant accepted this offer of support, and began contacting B on a regular basis to discuss claimant's concerns. Claimant also sent B pictures of her scalp on at least one occasion. On another occasion, claimant asked B not to tell the employer about their discussions, to which B responded, "I definitely won't. Scary[.]" Exhibit 1 at 11. Claimant continued to seek and accept B's support because she was "struggling" and "very isolated." Transcript at 34.

(10) On March 25, 2024, B sent an email to the medical director and office manager, raising concerns about claimant's conduct. In relevant part, the email read:

> There is a colleague at [the clinic] that is reaching out to me for support and has asked me not to share any of this. This has put me in a very hard position. She has said that [the medical director] is also aware of the situation and has told her to not talk to anyone about it and she will be fired if she tells a co-worker. This has happened over several months. I have tried to distance myself from the situation and have not been responding. I do not feel comfortable being a supportive person during a physical health or psychiatric crisis where there are secrets or "do not tell anyone at [the clinic]" requests. I am not sure what to do and feel uncomfortable with the situation, especially as apparently [the medical director] has knowledge of this, and I am put in a position to "not tell anyone, especially [the medical director]." I also would feel terribly for someone to lose a job because of me coming forward and for them to know this. Can you please not have me involved and figure out how to keep my name out of it.

Exhibit 2 at 3–4.

Upon receipt of this email, the medical director sent the office manager an email stating, in relevant part, "In addition to her poor reimbursements and low patient encounters, [claimant] is distracting her colleagues and effecting [*sic*] their work stability. We need to meet next week to discuss [claimant's] termination." Exhibit 2 at 3.

(11) On March 31, 2024,[2] another of the clinic's nurse practitioners, "M," sent an email to the office manager, also raising concerns about claimant's conduct. In relevant part, the email read:

> Just wanted to let you know about my concerns regarding [claimant].
>
> She has been consistently rude and condescending throughout my time here, starting with implying that I was actively trying to steal her patients by messaging me at 11pm (she later deleted the message). She also deleted my documentation on a patient that was transferring from her to me, accused me of illegally signing one of her notes when I tried to inform her of a chart error (I did not sign any notes). In general, she has had a hostile attitude towards me, which has led to me avoiding interacting with her if at all possible, whereas I wish I could have a more collegial relationship. I have always ensured that my communication with her has remained professional, and I do not understand why she is so negative towards me.

Exhibit 2 at 6.

(12) After receiving the March 31, 2024 complaint about claimant, the medical director again discussed the matter with the office manager, and decided to discharge claimant. Neither the medical director nor the office manager discussed the recent complaints with claimant prior to discharging her. On April 5, 2024, the employer discharged claimant on the basis of the March 25 and March 31, 2024 complaints

[2] At hearing and in some of their exhibits, the employer referred to this incident as having occurred on March 29, 2024. *See*, e.g., Exhibit 7 at 3; Transcript at 6. However, the employer also produced a copy of the email containing the second of the two complaints about claimant submitted in late March 2024, which shows a date stamp of March 31, 2024. Exhibit 2 at 6.

about claimant that they had received, as the employer believed that the conduct alleged in those complaints violated their expectations.

(13) Around the time that she was discharged, claimant saw an infectious disease specialist, who diagnosed her with an infection of parasitic nematodes, and bacterial and fungal infections secondary to the parasitic infection.

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).

The employer discharged claimant due to having received two separate complaints about claimant's conduct, from two different coworkers, on March 25 and March 31, 2024. The substance of these complaints alleged conduct which the employer believed violated their expectations. As a preliminary matter, given the closeness in time of the two complaints and the history of other concerns regarding claimant's conduct, it is necessary to determine 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).

In their written argument, the employer asserted, "The [order under review] does not fully reflect the egregious misconduct that led to the termination at hand… [T]he recent [hearing] only addressed two instances of misconduct, despite the fact that 13 incidents were presented as evidence." Employer's Written Argument at 1 (emphasis in original). The employer is correct in their assertion that they alleged that claimant had violated their policies or expectations on multiple other occasions besides the allegations raised in the March 2024 complaints. However, the record also shows that the employer continued employing claimant despite these other alleged violations, and ultimately did not decide to discharge claimant until they received the two complaints in March 2024. Therefore, the receipt of one or both of these complaints were the incidents without which the discharge would not have occurred.

Furthermore, the record indicates that *both* of these complaints were, in essence, the final incidents which led the employer to discharge claimant. At hearing, the employer's witness (the owner and medical director) testified that after receiving the second complaint, he spoke to his office manager and the two agreed to discharge claimant. Transcript at 6. However, the record also shows that the medical

director had already decided to discharge claimant on March 25, 2024, after having received the first complaint, although he did not move to do so immediately. Exhibit 2 at 3. Additionally, the employer's witness testified that "the combination of" both complaints "really sealed the deal," and that "the complaint on the 25th was more significant." Transcript at 10. Given this, the record shows that the employer's decision to discharge claimant was most likely based jointly on the two complaints and the allegations therein, and the facts have been found accordingly. As such, the analysis in this matter requires determining whether the allegations of claimant's behavior raised by either of the complaints constituted misconduct. The record shows that neither constitute misconduct.

The subject of the March 25, 2024 complaint was claimant allegedly repeatedly having contacted B for support regarding claimant's medical condition and related distress. This violated the terms of the August 2023 PIP, which required claimant to "refrain from sharing personal details about herself and her medical issues with staff and patients." Despite this violation of the employer's expectations, however, this does not amount to misconduct.

First, the employer's expectations in this instance were not reasonable. The order under review concluded as much, explaining, "A blanket prohibition on communication with coworkers is overly broad and generally would be unreasonable on its face." Order No. 25-UI-285495 at 4. This conclusion is, itself, overly broad, and somewhat misstates the facts. Claimant was not forbidden from engaging in *all* communication with coworkers, but instead forbidden from engaging in discussions of her personal issues with coworkers. As the record suggests that claimant had previously engaged in such discussions in ways that made her coworkers uncomfortable, this prohibition was, in a general sense, reasonable. In this instance, however, B had specifically *offered* claimant support, going so far as to give claimant her personal phone number. B had also agreed, without apparent hesitation, to keep claimant's concerns confidential.[3] Further, although it is apparent that B later became uncomfortable with claimant's continued discussion of her personal issues, the record does not show that B ever actually told claimant this, such that claimant would have had reason to know that she was making B uncomfortable.

The apparent purpose of the prohibition on claimant's disclosure of personal information to other employees was to avoid making those employees uncomfortable or disrupting their work. It was not reasonable, in this particular instance, for the employer to expect that claimant refrain from disclosing personal information to an employee who both consented and encouraged claimant to seek support from her, offered her personal phone number, and who never withdrew that consent or otherwise expressed to claimant that she wished claimant to stop these dicussions. Thus, because claimant violated a policy or expecation that the employer did not have a right to expect of an employee, that violation was not misconduct.

Further, even if the employer's expectation regarding claimant's discussion of her personal issues *was* reasonable in this particular circumstance, the employer has not shown, by a preponderance of the evidence, that claimant's violation of that expectation was done willfully or with wanton negligence. The record shows that claimant was, generally speaking, aware of the PIP's prohibition on discussing

[3] Regarding claimant's request for confidentiality, the record contains no indication that the employer ever told claimant that she was not allowed to request such confidentiality when speaking to other employees about personal matters, or that claimant ever had reason to know of such an expectation. Thus, regardless of B's later-expressed discomfort with claimant's request for confidentiality, the employer has not met their burden to show that this request was a willful or wantonly negligent violation of their expectations.

her personal issues with coworkers. However, at hearing, claimant testified, "So at the time, I was struggling and didn't, you know, I was very isolated in what I was going through, and so I took [B] up on the offer and after I did that, it did come to my mind like, oh shit, you know, I shouldn't be having this conversation because of that, because of the performance point. But it wasn't like I intentionally." Transcript at 34–35. This testimony, when viewed with claimant's concurrent medical and mental health issues, shows two things. First, while claimant was aware of the prohibition in the PIP, it did not immediately occur to her that her actions were violations of the PIP, and she did not *intend* to violate it. As such, the violation of the terms of the PIP was not willful. Second, claimant was distraught and in overall poor health at the time she was contacting B about her personal issues, and claimant believed it necessary to continue doing so because she felt that she needed support, and only did so because B initiated an offer to lend support and had given claimant her personal phone number. Therefore, because claimant did not act without regard for the consequences of her actions and was impacted by her mental and physical health conditions, those actions were not wantonly negligent.

Regarding the March 31, 2024 complaint, the allegations in that complaint are not sufficient to show that claimant violated any of the employer's expectations willfully or with wanton negligence. The employer's witness testified that they had a "blanket professionalism statement… [regarding] professional communication and respect towards patients and staff." Transcript at 9–10. However, the employer did not expound upon any specific, objective requirements included in this policy, such that it would be possible to find objectively that any of claimant's conduct, as alleged in the March 31, 2024 complaint, violated it. Furthermore, much of that complaint alleged vague, subjective concerns such as claimant being "rude and condescending" and "hostile," and "implying" that the complainant was trying to "steal" claimant's patients. None of these concerns show, objectively, what claimant allegedly did, or even when these occurrences allegedly happened, and the employer has therefore not met their burden to show that the alleged conduct giving rise to those concerns constituted misconduct on claimant's part. Regarding the more specific concern of claimant having deleted the complainant's documentation, the record lacks specifics as to when this allegedly occurred, the context in which it allegedly occurred, and the policies or expectations that the alleged conduct violated. Because the employer did not offer any of this information into the record, they have also not met their burden to show that this allegation constituted misconduct.

In sum, the employer has not met their burden to show that claimant's actual or alleged conduct, which was the subject of both the March 25, 2024 and March 31, 2024 complaints, constituted willful or wantonly negligent violations of the employer's expectations. As such, 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-285495 is affirmed.

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

DATE of Service: <u>May 7, 2025</u>

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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