

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0200**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 15, 2024, 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 beginning September 22, 2024 (decision # L0007372554).<sup>1</sup> On December 5, 2024, decision # L0007372554 became final without claimant having filed a request for hearing. On December 23, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on January 2, 2025, issued Order No. 25-UI-278573, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 16, 2025. On January 4, 2025, claimant filed a timely response to the appellant questionnaire.

On January 24, 2025, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 25-UI-278573 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # L0007372554. On March 13, 2025, ALJ Goodrich conducted a hearing, and on March 21, 2025, issued Order No. 25-UI-286901, allowing claimant's late request for hearing and reversing decision # L0007372554 by concluding that claimant's discharge was not for misconduct and did not disqualify claimant from receiving benefits. On March 27, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090

<sup>1</sup> Decision # L0007372554 stated that claimant was denied benefits from October 20, 2024 to October 18, 2025. However, because decision # L0007372554 concluded that claimant was discharged on September 22, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 22, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

(May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-286901 allowing claimant's late request for hearing. That part of Order No. 25-UI-286901 is **adopted**. See ORS 657.275(2). The rest of this decision addresses the work separation.

**FINDINGS OF FACT:** (1) Vesta Hospitality employed claimant as a hotel breakfast attendant until September 23, 2024.

(2) The employer expected that their employees would not discuss "inappropriate topics" with coworkers, including negative feelings about the workplace or discussions about sexual relationships that might make the coworker uncomfortable. Claimant understood this expectation. Transcript at 28.

(3) By August 2024, the employer was dissatisfied with several aspects of claimant's performance, including not keeping the breakfast area clean, not restocking food items, and going to other areas of the hotel to chat with other employees. On August 15, 2024, August 30, 2024, and September 6, 2024, the employer warned claimant regarding the cleaning and restocking issues. The September 6, 2024, warning was issued in writing.

(4) On September 20, 2024, claimant complained to the employer's general manager about "kitchen floors being wet and dirty all the time," which claimant felt was a safety hazard. Transcript at 21. The manager replied that claimant was "half the cause of that because. . . he's kind of careless when he does. . . dishes." Transcript at 21. The employer reminded claimant that keeping the floor clean and dry was one of claimant's responsibilities, and the manager expressed that he did not agree with claimant that unsafe conditions existed.

(5) Later on September 20, 2024, a hotel bartender complained to the manager that claimant was "banging pots and pans," and that she did not want to work with claimant anymore. Transcript at 21. The bartender additionally stated that claimant "constantly lingers around her trying to make small talk and complains about [his] job," and that these actions made her feel "uncomfortable." Transcript at 24. The manager did not intend to discharge claimant after hearing this complaint, but planned to correct these behaviors.

(6) On September 22, 2024, the hotel's food and beverage manager, E., complained to the general manager that an employee, A., had reported to E. that claimant had been "bragging [to A.] about having a sexual affair" with E's daughter, who had previously worked at the hotel. Transcript at 22. Claimant had not had any type of relationship with E.'s daughter and had not claimed to have had such a relationship with her to A.

(7) On September 23, 2024, the general manager discharged claimant by telephone based on his belief that claimant had violated the policy against "inappropriate" conversations because of E.'s report.

**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 based on their belief that he discussed “inappropriate topics” with a coworker. The employer expected that their employees would not discuss topics with coworkers that were likely to make them uncomfortable, including sexual relationships. Claimant testified that he understood this expectation. Transcript at 31. While the employer had been dissatisfied with several other aspects of claimant’s work performance in the weeks preceding his discharge, the general manager testified that as of September 20, 2024, he had decided to only warn claimant for these deficiencies, rather than discharge him. Transcript at 26. On September 22, 2024, the employer learned of E.’s complaint that claimant had bragged about having a sexual affair with her daughter to A. More likely than not, this was the proximate cause of the employer’s decision to discharge claimant the following day. 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. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009. Therefore, to show that claimant was discharged for misconduct, the employer must initially show that claimant willfully or with wanton negligence violated a reasonable expectation regarding the subject of E.’s report.

The parties offered conflicting accounts regarding the veracity of the September 22, 2024, report. The employer’s general manager testified that on September 22, 2024, E. showed him a text message to her from A. in which A. claimed that claimant was “bragging” to him about having a “sexual affair” with E.’s daughter, a former employee of the hotel. Transcript at 22. A. complained that he did not want claimant to engage him in conversations of that nature, and E. complained that such statements were “really upsetting her.” Transcript at 23. In contrast, claimant testified that he had never had a relationship of any kind with E.’s daughter and had never mentioned having a relationship with E.’s daughter to A. Transcript at 32-33.

In weighing this conflicting evidence, claimant’s first-hand testimony that he did not have a relationship with E.’s daughter and did not discuss such a relationship with A. is entitled to greater weight than A.’s hearsay account to the contrary. Therefore, the employer has not shown by a preponderance of the evidence that claimant discussed “inappropriate topics” with A. in violation of their policy. Accordingly, because the employer has not shown that claimant violated the employer’s policy, claimant was not 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-286901 is affirmed.

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

**DATE of Service:** April 30, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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