EO: Intrastate
BYE: 18-Oct-2025

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

173
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0219

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 9, 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 from September 29, 2024, through October 18, 2025 (decision # L0007579935). Claimant filed a timely request for hearing. On March 20 and April 7, 2025, ALJ Griffith conducted a hearing, and on April 10, 2025, issued Order No. 25-UI-289095, modifying decision # L0007579935 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective September 22, 2024, and until requalified under Department law.[1] On April 13, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant 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). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him 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) Plaid Pantries, Inc. employed claimant full-time at one of their convenience stores in northeast Portland, Oregon from January 13, 2023, through September 30, 2024.

(2) When claimant was a teenager, he was the victim of an assault that left him with a permanent brain injury. As a result of the injury, claimant sometimes slurred his speech, particularly when he was tired. Claimant's speech impediment sometimes caused people to mistakenly believe that he was intoxicated.

[1] Although Order No. 25-UI-289095 stated it affirmed decision # L0007579935, it modified that decision by changing the disqualification period. Order No. 25-UI-289095 at 4.

(3) The employer maintained a policy permitting store employees to "charge" store merchandise for their own personal use while working. Exhibit 1 at 14. For full-time employees like claimant, the "charge" limit was $150 per week, or $300 per biweekly pay period. The employer also maintained a policy prohibiting "insubordination," defined to include "failure to cooperate with a loss prevention investigation, and/or failure or refusal to carry out a reasonable job task assigned by a supervisor or other management personnel." Exhibit 1 at 15. These policies were memorialized in the employer's handbook, which claimant received when he was hired.

(4) On April 25, 2024, the employer issued claimant a written warning for having charged a total of $409.66 in store merchandise during the pay period ending on April 18, 2024, thus exceeding the $300 per pay period limit.

(5) On both September 23 and 25, 2024, a customer at claimant's store filed a complaint with the employer alleging that claimant was "high" while working at the store. Exhibit 1 at 6–7. However, claimant does not drink alcohol or use other intoxicants, and was not intoxicated on those occasions.

(6) On or shortly before September 27, 2024, the employer's area manager received a report from the employer's corporate office that claimant had exceeded the charge limit on the two most recent pay periods. For the pay period ending on September 13, 2024, the report stated that claimant charged a total of $502.70. For the pay period ending on September 27, 2024, the report stated that claimant charged a total of $438.65.

(7) On or around September 28, 2024, the employer's area manager sought to meet with claimant to discuss with him concerns over the customer complaints, the reports that he exceeded the charge limit during each of the two preceding pay periods, and a previous write-up from August 2024 regarding a violation of the employer's cash-handling policy. The area manager initially tried to meet with claimant on September 28, 2024, but claimant was unable to attend that meeting because he had been involved in a motor vehicle accident that day. The area manager then tried to meet with claimant again, but claimant "made excuses" and was not immediately able to meet with her. Exhibit 1 at 3. The area manager felt this was "insubordinate." Exhibit 1 at 3.

(8) On September 30, 2024, claimant met with the area manager, although he was significantly late for the meeting because the area manager told him to meet her at the wrong location. During the meeting, the area manager told claimant that she was suspending him "pending further notice" because of the report that he had exceeded the charge limit during the preceding two pay periods. Exhibit 1 at 3. Shortly after the meeting,[2] the employer discharged claimant because of the customer complaints they

[2] The record contains several inconsistencies that make it difficult to determine the correct date of claimant's separation. For instance, the employer's witness testified that claimant was discharged on September 30, 2024. March 20, 2025, Transcript at 6–7. However, a narrative written by the area manager (who did not testify) indicated that she *suspended* claimant on September 30, 2024, at least suggesting that he might have been discharged on a later date. Exhibit 1 at 1. Further, claimant testified that he met with the area manager on September 30, 2024, who told him that he was "suspended pending termination," that he was "suspended for that weekend," and that he went into the store on the following Monday and learned he had been discharged. March 20, 2025, Transcript at 23. However, September 30, 2024, *was* a Monday, meaning that there was no weekend immediately following that date during which claimant could have been suspended. Thus, based on these varying accounts, it is possible that claimant was discharged at any point between September 30, 2024, and the following Monday, October 7, 2024.

had received alleging that he was intoxicated at work, the alleged violations of their charge limits, and their belief that claimant been "insubordinate" in missing meetings with the area manager.

(9) On October 11, 2024, the employer issued claimant a paystub for a direct-deposit transaction with a pay period that was listed as starting and ending on October 8, 2024. Exhibit 2 at 2. The paystub listed no hours worked during that pay period, and the only payment listed was in the amount of $212.09, explained to be an "adjustment" for "Emp Charge." Exhibit 2 at 2. No taxes were withheld, or other deductions drawn, from that amount. Exhibit 2 at 2.

CONCLUSIONS AND REASONS: The employer failed to establish that claimant's discharge was 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 in relation to the customer complaints they had received alleging that he was intoxicated at work, the alleged violations of their charge limits, and their belief that claimant had been "insubordinate" in missing meetings with the area manager. As a preliminary matter, the order under review concluded that the second alleged charge overage was the proximate cause of the employer's decision to discharge claimant, explaining, "…after extensive testimony from both parties, the final incident was revealed to be claimant's store account policy violation on September 27, 2024, when his store account balance was $438.65 for the two-week pay period ending on that date." Order No. 25-UI-289095 at 3. However, the record is unclear as to which of the varying allegations constituted the proximate cause(s) of claimant's discharge.

The employer's witness offered multiple, somewhat varying statements on this point, testifying that claimant was discharged for some combination of the customer complaints, the missed meetings, and the alleged violations of the charge limits. *See*, *e.g.,* March 20, 2025, Transcript at 10; April 7, 2025, Transcript at 21. The area manager's narrative suggested that she suspended claimant because of the alleged charge overages, but also noted her concerns regarding claimant being "insubordinate" by missing meetings, and the customer complaints that the employer had received in September 2024. Exhibit 1 at 1. Given this uncertainty, it is prudent to address all three of these concerns as potentially proximate causes of claimant's discharge. The employer has not met their burden to show that any of them constituted misconduct.

As for the alleged charge overages, the order under review concluded that the alleged charges for the pay period ending September 27, 2024, constituted misconduct because "Claimant did not dispute that

he knowingly violated the store account policy, though he questioned whether the balance on his account that day was accurate." Order No. 25-UI-289095. While it is technically true that claimant did not "dispute that he knowingly violated the store account policy," this statement is misleading because claimant was never asked on the record whether he violated the policy, let alone whether he did so knowingly. To the contrary, claimant testified that he had asked the area manager for an audit to determine if he "really owed that much." April 7, 2025 Transcript at 7. Claimant further explained that he received a direct deposit from the employer dated October 11, 2024 in the amount of $212.09, and suggested that that amount "would decrease the amount that [claimant] charged." April 7, 2025 Transcript at 7. This testimony and the copy of the October 11, 2024 payment included in Exhibit 2 suggest that claimant believed, or at least had reason to believe, that the employer's allegations of him having exceeded the allowed charge limits were inaccurate.

Additionally, contrary to what the order under review asserted, the employer did not offer any evidence to show that claimant *knowingly* exceeded the allowed charge amounts for the pay periods in question. Neither did the employer give any explanation as to how those amounts were calculated or offer any corroborating evidence, such as accounting data, to support their allegations. The record does not even show, for instance, what sort of system, if any, was in place to track employee charges. Further, the employer's witness (a human resources representative) was not a direct witness to the allegedly excessive charges.[3] Neither, apparently, was the area manager who took action after learning of those allegations, as they came from a report from the employer's corporate office. In short, the employer asserted without first-hand knowledge or corroborating evidence that claimant exceeded the employee charge limits, claimant called into question the accuracy of those allegations, and a document in the record suggests that claimant was refunded for a previous deduction relating to employee charges. Given this, the employer has not met their burden to show that claimant exceeded the charge limits for either of the two September 2024 pay periods, or that, if he did, that he did so willfully or with wanton negligence. Therefore, to the extent that the employer discharged claimant for this reason, the record fails to establish misconduct.

To the extent that claimant was discharged for allegedly missing meetings and being "insubordinate," the employer also failed to meet their burden to show this constituted misconduct. Although the record was not extensively developed on this point, it shows that the area manager had initially sought to meet with claimant on or around September 28, 2024, but that he was unable to meet with her on that date because he was involved in a motor vehicle accident. The manager's written narrative further explained that "every time [she] tried to set up a time to discuss the complaints and the charges [with claimant]… it was doggy [*sic*]," and that claimant "made excuses, besides the car accident of course," regarding the manager's attempts to meet with him. Exhibit 1 at 1. The manager's narrative did not indicate what other attempts she made to meet with claimant or what his "excuses" were, and the employer's witness was unable to offer this information at hearing.

Further, it appears that the manager first attempted to meet with claimant on the same day that he was involved in a motor vehicle accident, and that claimant did meet with her approximately two days later. At hearing, the employer's witness testified that she was not aware of any specific policy that claimant violated by not meeting with the manager when first requested, and the employer's written policies do

[3] The employer's witness testified that her knowledge of this matter was drawn from "the documentation and write-ups and everything." March 20, 2025, Transcript at 6.

not appear to contain such a requirement. March 20, 2025 Transcript at 15–16; Exhibit 1 at 15. Nor does the "insubordination" policy include any provisions which obviously apply here. Even assuming that the employer *did* have such a policy, however, and that claimant had notice of such a policy, the preponderance of the evidence shows that claimant made a good-faith effort to meet with the area manager within a reasonable amount of time after she first requested that he do so. Therefore, the employer has not met their burden to show that claimant willfully, or with wanton negligence, violated any employer policy or expectation requiring him to meet with the manager as requested, and claimant's failure to meet with the area manager earlier than September 30, 2024 therefore was not shown to be misconduct.

Finally, regarding the customer complaints from September 2024, the employer has not met their burden to show that claimant was under the influence of alcohol or illegal drugs on the dates the customer complained about. As the customer did not testify at the hearing, those complaints were hearsay. By contrast, claimant testified that he has a brain injury which sometimes causes him to slur his words, and which is sometimes mistaken for intoxication. April 7, 2025 Transcript at 5–6. He further testified that he has "never been high at work," is "totally clean," and "[doesn't] even drink." March 20, 2025 Transcript at 28. Because claimant's testimony is a first-hand account, it is afforded greater weight than the allegations in the customer complaints that claimant had been intoxicated at work. As such, the employer failed to show, by a preponderance of the evidence, that claimant was intoxicated at work. Therefore, to the extent that the employer discharged claimant for this reason, the record does not show that claimant was discharged for a disqualifying act.[4]

For the above reasons, claimant was discharged, but not for misconduct, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-289095 is set aside, as outlined above.

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

DATE of Service: May 16, 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.

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.

[4] The employer maintained a written policy regarding the use of drugs and alcohol at work. *See* Exhibit 1 at 15. Had the record shown that the allegations of claimant's intoxication at work were substantiated, the determination of whether claimant's conduct was disqualifying would likely need to be considered under the Department's drug, cannabis, and alcohol adjudication policy. *See* ORS 657.176(9). Because the record does not so show, however, it is not necessary to consider claimant's conduct under this policy.

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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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