

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0230

Reversed
Late Request for Hearing Allowed
No Disqualification

PROCEDURAL HISTORY: On March 26, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving unemployment insurance benefits effective December 31, 2023 (decision # L0003280214).¹ On April 1, 2024, claimant filed a timely request for hearing that was not recognized as a hearing request. On April 15, 2024, decision # L0003280214 was treated as having become final without claimant having filed a request for hearing. On September 12, 2024, claimant filed a second request for hearing, which was untimely.

On April 1, 2025, ALJ Honea conducted a hearing, at which the employer failed to appear, and on April 7, 2025, issued Order No. 25-UI-288734, dismissing claimant's request for hearing on decision # L0003280214 as late without good cause. On April 16, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Midwest Veterinary Partners LLC employed claimant as a veterinary technician from December 2013 until January 5, 2024.

(2) The employer prohibited employees from using certain language in the workplace, such as discriminatory language. This expectation was contained in the employee manual. Claimant had a copy of the manual. The manual did not contain any policies about making jokes in the workplace about the corporate owner of the employer.

¹ Decision # L0003280214 was blank where it should have stated claimant's disqualification date. However, because the decision asserted that claimant's work separation occurred on January 5, 2024, decision # L0003280214 should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 31, 2023 and until he earned four times his weekly benefit amount. See ORS 657.176.

(3) On January 5, 2024, the employer's veterinary hospital director and claimant's manager met with claimant. They advised that the employer was discharging claimant based upon a complaint a coworker had made about claimant.

(4) The coworker's complaint alleged that claimant acted inappropriately in the workplace by describing his log-in password in a manner that disparaged the corporate owner of the employer. Claimant allegedly did so by joking with other technicians in a group text and in the veterinary hospital break room about the fact that employees have to change their passwords frequently. The coworker complained that claimant had allegedly joked something to the effect of, "[T]his is crap number 1, number 2, . . . and we're up to number 30." Transcript at 27.

(5) In the meeting, claimant denied doing the things alleged in the coworker's complaint. However, the director and manager stated that the employer "needed to let [claimant] go," and terminated claimant's employment effective January 5, 2024. Transcript at 24.

(6) On March 26, 2024, the Department mailed decision # L0003280214 to claimant's address on file with the Department. Decision # L0003280214 adjudicated claimant's January 5, 2024, work separation as a discharge for misconduct that disqualified claimant from receiving benefits effective December 31, 2023. The decision stated, "You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **April 15, 2024.**" Decision # L0003280214 at 2 (emphasis in original). The administrative decision stated that calling the Department was one method by which a hearing could be requested.

(7) On March 29, 2024, the Department issued a different administrative decision, decision # L0003390299,² which concluded that claimant was not available to work and therefore was not eligible to receive benefits for weeks claimant claimed from early January through early February 2024.

(8) On April 1, 2024, claimant called the Department. Claimant spoke with a Department representative and asked how he "c[ould] appeal [the] decision" upon which his "Jan/Feb/March weekly claims were denied[.]" The Department representative "referred" claimant to decision # L0003280214 "for [a]ppeal information."³

(9) On April 16, 2024, claimant filed a timely request for hearing on the available to work administrative decision. A hearing was held on that issue and, in June 2024, the ALJ issued a hearing order reversing the decision and ruling in claimant's favor. Two or three weeks after he received the favorable hearing order on the available to work issue, by either calling the Office of Administrative Hearings (OAH) or

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

³ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

the Department, Claimant was made aware that the Department had treated decision # L0003280214 as having become final without him having filed a request for hearing.

(10) September 12, 2024, claimant called the Department and filed a request for hearing on decision # L0003280214, by telephone.

CONCLUSIONS AND REASONS: Claimant's request for hearing on decision # L0003280214 was timely filed. The employer discharged claimant, but not for misconduct.

Request for Hearing. Under OAR 471-040-0005(1) (July 15, 2018), "A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed."

The order under review dismissed claimant's hearing request, concluding that claimant's September 12, 2024, late request for hearing on decision # L0003280214 was not filed within a reasonable time after the circumstances beyond claimant's reasonable control that prevented timely filing ended. Order No. 25-UI-288734 at 3. The record does not support dismissing claimant's request for hearing. Claimant's April 1, 2024, telephone call to the Department constituted a timely request for hearing on decision # L0003280214.

The deadline to file a timely request for hearing on decision # L0003280214 was April 15, 2024. On April 1, 2024, claimant called the Department and spoke with a Department representative. At that time, claimant asked how he "c[ould] appeal [the] decision" upon which his "Jan/Feb/March weekly claims were denied[.]" The Department representative "referred" claimant to decision # L0003280214 "for [a]ppeal information."

The above information, documented in a note on claimant's claim from Department records, demonstrates a present intent to appeal. Because the information describes claimant as wishing to appeal the decision upon which his "Jan/Feb/March weekly claims were denied," it necessarily relates to decision # L0003280214. That decision denied claimant benefits starting December 31, 2023, and was the decision that was effective in denying benefits through March 2024 given that decision # L0003390299, the available to work decision, only denied benefits from early January through early February 2024. Thus, in the April 1, 2024, call, claimant expressed a present intent to appeal decision # L0003280214 and it can be determined that that decision was the decision being appealed. Claimant therefore filed a timely request for hearing on decision # L0003280214 and is entitled to review of the merits of that decision.

Discharge. 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 failed to meet their burden to prove that they discharged claimant for misconduct. First, although claimant acknowledged receiving the employee manual and noted that using certain language in the workplace, such as discriminatory language, was prohibited, the manual did not contain any policies about making jokes in the workplace about the corporate owner of the employer. Transcript at 29-30. Thus, the employer failed to establish that claimant knew or should have known that what claimant was alleged to have done by the coworker was prohibited. Moreover, at hearing, claimant denied making jokes that disparaged the corporate owner of the employer, repeatedly referring to the coworker’s complaints as “false allegations” and testifying that he told the hospital director and manager in the discharge meeting that he had not done the things alleged by the coworker. Transcript at 24-25.

Accordingly, the employer did not prove by a preponderance of the evidence that claimant violated their standards of behavior either willfully or with wanton negligence. Claimant therefore 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-288734 is set aside, as outlined above.

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

DATE of Service: May 13, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.