

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0235**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and was disqualified from receiving benefits effective August 11, 2024 (decision # L0007478239).<sup>1</sup> Claimant filed a timely request for hearing. On April 3, 2025, ALJ Murray conducted a hearing, and on April 11, 2025, issued Order No. 25-UI-289287, affirming decision # L0007478239. On April 17, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's argument that were based on the hearing record.

**FINDINGS OF FACT:** (1) TLC Weiss Enterprises, LLC employed claimant as a stocker and cashier in their grocery store from May 1, 2022, to August 12, 2024.

(2) The employer expected that their employees using handheld scanners would keep the scanners attached to their wrist or on their person at all times. Prior to June 2024, claimant understood that she should take precautions to prevent theft of this property, though not necessarily by keeping it on her person. During and after June 2024, claimant understood that the employer specifically expected her to keep it attached to her wrist whenever possible.

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<sup>1</sup> Decision # L0007478239 stated that claimant was denied benefits from August 11, 2024 to August 16, 2025. However, decision # L0007478239 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 11, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

(3) In March 2024, the employer's owner observed that claimant had left the scanner in view of customers while she worked in an aisle of the store. The owner told claimant that he "would prefer it be strapped to [her] hand," and that if she had to set it down, "even on the cart would be better because he didn't want it sitting on the shelf." Transcript at 17-18.

(4) In June 2024, claimant was using a handheld scanner and left it momentarily unattended in a backroom of the store where merchandise was prepared for stocking. The owner observed this and told claimant that he "just wanted it strapped to [her] hand." Transcript at 18.

(5) On August 11, 2024, claimant was using a handheld scanner with a broken wrist strap that could not be attached to her hand. No scanners with functional straps were available that day. Claimant was training a coworker how to stock shelves with products that were in a cart next to them. Because claimant could not strap the scanner to her wrist, she kept it in a box with a towel over it on the cart so that it would not be visible to customers, and parked the cart directly beneath a security camera. A woman near them "started acting sporadically [*sic*]," and while claimant was "distracted" by her, one of the woman's companions "went through the top of the cart," took the scanner from the box, and secreted it on his person. Transcript at 19-20. They then left the store with the scanner.

(6) Claimant noticed the scanner missing almost immediately and before the parties responsible left the store. Claimant reported it to management, who immediately reviewed surveillance footage that depicted the theft, and reported the incident to law enforcement. Police contacted the responsible parties near the store a short time later, recovered the scanner undamaged, and returned it to the store.

(7) The owner was later apprised of the theft, and on August 12, 2024, discharged claimant. The owner decided to discharge claimant because he believed that she failed to secure "high cost" property in violation of the employer's policy. Transcript at 10. Aside from the two instances of verbal "coaching" regarding how the scanner should be secured, claimant had received a written warning regarding her attendance, but had otherwise not been disciplined during her employment. Transcript at 7. Claimant would not have been discharged but for the theft of the scanner.

**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 because they believed that she failed to properly secure a handheld scanner that was stolen, in violation of their policy. The order under review concluded that claimant "at

least should have known” that the employer expected her to keep the scanner on her person at all times, without exception, and that her failure to do so on the occasion it was stolen constituted wanton negligence. Order No. 25-UI-289287 at 4. The record does not support that conclusion.

The employer reasonably expected that their employees using handheld scanners would “always” have them “in-hand or in-pocket.” Transcript at 8. The owner testified that this expectation was contained in an employee handbook provided to claimant at hire, the text of which was not made part of the hearing record, and explained that the relevant portion stated with regard to “all our company property” that an employee must “not damage, misuse or expose it to the risk of theft.” Transcript at 8-9. In contrast, claimant testified that she never received or saw an employee handbook, and was not aware of any policy or expectation specific to the use of handheld scanners, except for the two times the owner addressed her about the issue in 2024. As the employer bears the burden of proof by a preponderance of the evidence, they have not met that burden to show that claimant knew or should have known that the employee handbook contained any specific expectation regarding the use of handheld scanners. However, it is reasonable to infer that from the time of hire, claimant understood she should exercise at least ordinary care in protecting the employer’s property from theft. Claimant was made aware of more specific expectations regarding the scanner, as explained herein, in March and June 2024.

The parties agreed that the owner cautioned claimant on two occasions regarding how she secured the scanner prior to the August 11, 2024, theft, though they gave conflicting testimony regarding some aspects of those occasions. The owner testified that on approximately March 4, 2024, he observed claimant leave the scanner on a “large cart” full of merchandise she was stocking in an aisle of the store, and on approximately June 7, 2024, he observed that claimant had left a scanner unattended in the backroom on a table where merchandise was prepared for stocking. Transcript at 11-12. The owner further testified that on both occasions, he “coached” claimant “about making sure that she does have it in-hand or in her pocket on her person, and not being left onto a cart, or a box, or a shelf.” Transcript at 8. The owner did not dispute claimant’s account of the August 11, 2024, theft, including that no scanners with functional wrist straps were available to use that day.

Claimant disputed that the second incident occurred on June 7, 2024, as she did not work that day, but did not dispute that it occurred around that time. Transcript at 25. Claimant testified regarding the March 2024 incident that the owner “just said he would prefer it be strapped to my hand, then he said if I had to set it down, even on the cart would be better, because he didn’t want it sitting on the shelf.” Transcript at 17-18. Claimant testified regarding the June 2024 incident that the owner told her he “just wanted it strapped to my hand.” Transcript at 18. Claimant therefore implicitly asserted that she had not been instructed to put the scanner in her pocket, or about what to do with the scanner if she could not secure it to her wrist because the strap was broken. In weighing this evidence, the two accounts are no more than equally balanced, and the employer has therefore not met their burden of proof in this regard. The facts regarding the March and June 2024 incidents have therefore been found according to claimant’s account. Therefore, claimant knew on August 11, 2024, that the employer expected her to keep the scanner strapped to her wrist, but because that was impossible that day due to the broken strap, she only knew or should have known that the employer expected her to exercise ordinary care in protecting the scanner from theft.<sup>2</sup>

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<sup>2</sup> The record is silent as to whether claimant was wearing clothing with a pocket on August 11, 2024, such that she could have secured the scanner there. Therefore, even if the employer had shown by a preponderance of the evidence that claimant knew

Regarding the August 11, 2024, theft, claimant testified, and the employer did not rebut, that she intentionally hid the scanner in a box, covered it with a towel, and parked the cart directly in view of a security camera, because she could not secure it to her wrist. Transcript at 20. Claimant also described the theft, without rebuttal from the employer, as having been executed with at least some degree of sophistication, in that it involved coordination between one person distracting claimant and her coworker and another person searching the cart during the distraction, apparently for the scanner specifically. Claimant's efforts to secure the scanner in the cart because she could not attach it to her wrist evinced that she was not indifferent to the consequences of her actions or of the employer's interest in protecting their property. Therefore, claimant's actions constituted, at most, ordinary negligence. Accordingly, because the employer failed to prove by a preponderance of the evidence that the theft resulted from wanton negligence, they did not show that claimant was 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-289287 is set aside, as outlined above.

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

**DATE of Service:** May 15, 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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she was expected to keep the scanner in a pocket, the employer failed to show that it was possible for claimant to do so on that date.



# 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.

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

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