

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0259**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 31, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective October 13, 2024 through October 11, 2025 (decision # L0006932335).<sup>1</sup> Claimant filed a timely request for hearing. On January 27, 2025, and continuing on March 3 and April 11, 2025, ALJ Lucas conducted a hearing, and on April 11, 2025 issued Order No. 25-UI-289269, affirming decision # L0006932335 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective October 13, 2024. On April 28, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Providence Health & Services Oregon employed claimant, most recently as a clinic care coordinator, from September 24, 2007 through October 16, 2024.

(2) Throughout claimant's employment, she requested several days off each year for religious observances. The employer accommodated each of these requests, even if the days off coincided with other employees in claimant's department requesting the same day off.

(3) Beginning in 2020, claimant was allowed a hybrid work schedule such that she worked from home for two of five days each week. Claimant's coworkers had similar schedules. None of claimant's

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<sup>1</sup> Decision # L0006932335 stated that claimant was denied benefits from October 13, 2024 to October 11, 2025. However, decision # L0006932335 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 13, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

coworkers were permitted fully remote work schedules, except one who was given such permission from 2020 through 2022 as an Americans with Disabilities Act (ADA) accommodation.

(4) In November 2023, claimant began a period of maternity leave. She returned to work on June 11, 2024. Prior to her return, claimant requested that the employer allow her to work remotely full-time until her mother, who lived out of state, moved to Oregon to assist with childcare. The employer agreed to this on a temporary basis and changed claimant's role as a clinic care coordinator from "embedded" to "float," meaning that she primarily filled in when coworkers were absent. January 27, 2025 Transcript at 11. While the change from "embedded" to "float" was permanent, the employer intended the modification to fully remote work to be only a temporary accommodation of claimant's childcare situation. Nonetheless, claimant believed that the "float" position she transitioned to should have been a fully remote position on a permanent basis.

(5) On July 22, 2024, claimant gave her supervisor a list of her requested days off for religious observances over the next twelve months. Claimant believed that some of these days off coincided with days that her coworkers had requested off, and that after submitting the list, "everybody's tone and demeanor changed with [her]" and this made claimant "uncomfortable." January 27, 2025 Transcript at 15. Claimant's supervisor had accommodated all requests for time off since 2016 when she became the supervisor, and intended to accommodate these requests even if they coincided with days other employees had requested off.

(6) On August 6, 2024, the employer notified claimant that they expected her to return to a hybrid schedule and work in-person on Monday, Wednesday, and Friday of each week beginning September 6, 2024. Claimant requested a meeting to seek reversal of that decision.

(7) On August 13, 2024, a meeting was held between claimant and management to discuss claimant's return to hybrid work. Claimant's plan for her mother to relocate to Oregon and provide childcare had fallen through and claimant felt that it was "hard to find daycare that's suitable." January 27, 2025 Transcript at 12. The employer therefore extended the start date of the hybrid schedule to September 23, 2025 to allow her additional time to make childcare arrangements. This expectation was reiterated to claimant in an email that day following the meeting.

(8) On August 13, 2024, claimant replied to the email, stating, "I will not be returning in person on 9/23 or anytime soon." January 27, 2025 Transcript at 23. Claimant was advised to consult the employer's third-party administrator for certain human resources issues about the childcare issue, and did so. The administrator processed claimant's inquiry as a request for ADA accommodation and denied it because it was not based on claimant's own disability. Management in claimant's department discussed this denial with her on September 10, 2024, and also assisted claimant in seeking fully remote positions in other departments to which she could apply.

(9) On September 20, 2024, the employer sent a letter to claimant by FedEx reiterating their expectation that claimant begin working the hybrid schedule on September 23, 2024. Claimant received the letter but continued to work from home on and after September 23, 2024. Claimant was unwilling to return to in-person work until September 2029 when her child would be old enough to enroll in school.

(10) On October 2, 2024, the employer sent another letter to claimant stating that she must begin the hybrid work schedule or resign by October 16, 2024. Claimant received the letter.

(11) On October 16, 2024, claimant worked from home. At the end of the workday, the employer notified claimant that she was discharged for failing to report for work in-person.

**CONCLUSIONS AND REASONS:** Claimant was discharged 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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b) (September 22, 2020). The following standards apply to determine whether an “isolated instance of poor judgment” occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer’s reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer’s reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

OAR 471-030-0038(1)(d).

Claimant was discharged because she failed to report to work in-person on October 16, 2024. The employer expected that claimant would resume working a hybrid schedule that included three in-person days per week beginning that day. Claimant did not dispute that she willfully failed to report as directed for in-person work, but suggested that the employer's expectation was not reasonable. OAR 471-030-0038(1)(d)(C) provides, in relevant part, "A conscious decision not to comply with an unreasonable employer policy is not misconduct."

Claimant testified that she knew of the employer's expectation that she begin the hybrid schedule on October 16, 2024, and that she did not comply with it because she was "uncomfortable coming back." April 11, 2025 Transcript at 5-6. Therefore, more likely than not, claimant willfully violated the employer's expectation. Claimant asserted that she wanted to work from home because she did not find childcare she felt was "suitable" to her child's special needs. January 27, 2025 Transcript at 12. However, claimant did not detail her efforts in seeking such care or demonstrate that securing appropriate care was impossible, and that she could not comply with the employer's directive for that reason. Instead, claimant implied that the in-person work expectation was imposed on her in retaliation for having requested several days off for religious observances, and because of that, was unreasonable.

Claimant cited various reasons for contending that, rather than the position remaining fully remote, the in-person work requirement was implemented in response to claimant's request for time off for religious observances. Claimant believed that a former coworker holding what she believed was a "float" position had been permitted fully remote work, and that the position should therefore have been fully remote permanently when claimant was given that position upon her return from maternity leave in June 2024. Claimant pointed to the timing of when she was notified to return to hybrid work being two weeks after her time off request. January 27, 2025 Transcript at 11. Claimant also testified to the "tone and demeanor" of the people she worked with changing shortly after the time off request was made. January 27, 2025 Transcript at 15. Claimant further highlighted her supervisor's failure to note claimant's work start date anniversary on the supervisor's calendar despite many other employees' anniversaries being noted there. March 3, 2025 Transcript at 38.

In rebuttal, claimant's supervisor testified that claimant's former coworker was permitted to work remotely from 2020 through 2022 only to comply with a valid ADA accommodation request. March 3, 2025 Transcript at 33. The "float" clinic care coordinator position had otherwise been a hybrid position since 2020, which was temporarily modified for two months to remote work for claimant to help her adjust with her return from maternity leave. April 11, 2025 Transcript at 15-16. The supervisor testified that the hybrid work schedule was implemented for claimant thereafter "to be fair to all the rest of [the] staff" who performed essentially the same tasks as claimant and had the same hybrid schedule. March 3, 2025 Transcript at 33. Claimant's supervisor denied engaging in or noticing any change in tone or demeanor from her staff toward claimant. March 3, 2025 Transcript at 44. The supervisor also testified regarding information on her calendar about employee anniversary dates, "I do my best to add everybody's work anniversary," with priority given to recognizing "major" anniversary years, then adding in information about others, but "sometimes I miss some," and claimant's seventeenth work anniversary on September 24, 2024 was one of "a handful of others that I hadn't put on my calendar yet." March 3, 2025 Transcript at 39-41. Further, the supervisor denied that the in-person work requirement was in any way related to claimant's request for time off for religious observances, and that claimant's requests had "always" been granted and would be granted, even if they conflicted with other employees' requests for time off, which were also granted. March 3, 2025 Transcript at 11-12, 30.

In weighing this evidence, it is more likely than not that the employer directed claimant to return to a hybrid work schedule based solely on business needs and without regard to claimant's religion. That claimant's requests for time off for religious observances had been accommodated without incident for more than a decade, and that claimant's coworkers were unaffected by claimant's requests for time off, support that the timing of any perceived slights by her supervisor or coworkers following her July 2024 request was coincidental. Further, to the extent claimant's coworkers treated her differently after the July 2024 request, claimant testified, "I don't know if they resented me working from home or my religious holidays." January 27, 2025 Transcript at 16. Therefore, the employer's expectation that claimant work in person three days per week, which claimant willfully violated, was reasonable and not motivated by unlawful discrimination or retaliation.

Moreover, claimant's actions cannot be excused as an isolated instance of poor judgment. To be considered isolated, "[t]he exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior." OAR 471-030-0038(1)(d)(A). The employer gave claimant an initial date to return to in-person work of September 6, 2024, and it was extended to September 23, 2024, then October 16, 2024, when she failed to comply. Claimant informed the employer that she was unwilling to work in person until September 2029 despite understanding the employer's expectation. Claimant's actions were therefore a repeated and continuing act, and were not "isolated" within the meaning of the rule. Accordingly, claimant's actions cannot be excused as an isolated instance of poor judgment, and constituted misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective October 13, 2024.

**DECISION:** Order No. 25-UI-289269 is affirmed.

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

**DATE of Service:** June 4, 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 دستورالعمل 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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Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://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.