

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0286**

*Modified*  
*Late Request for Hearing Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective December 1, 2024 (decision # L0007912584).<sup>1</sup> On January 13, 2025, decision # L0007912584 became final without claimant having filed a request for hearing. On March 18, 2025, claimant filed a late request for hearing on decision # L0007912584. ALJ Kangas considered claimant's request, and on March 26, 2025, issued Order No. 25-UI-287348, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 9, 2025. On April 8, 2025, claimant filed a timely response to the appellant questionnaire. On April 18, 2025, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 25-UI-287348 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # L0007912584. On May 2, 2025, ALJ Griffith conducted a hearing, and on May 7, 2025, issued Order No. 25-UI-291653, allowing claimant's late request for hearing on decision # L0007912584 and affirming that decision on the merits by concluding that claimant was discharged for misconduct and disqualified from receiving unemployment insurance benefits effective December 1, 2024. On May 12, 2025, claimant filed an application for review of Order No. 25-UI-291653 with the Employment Appeals Board (EAB).

**PARTIAL ADOPTION:** 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-291653 allowing claimant's late request for hearing. That part of Order No. 25-UI-291653 is **adopted**. See ORS 657.275(2).

<sup>1</sup> Decision # L0007912584 stated that claimant was denied benefits from December 1, 2024, to November 29, 2025. However, decision # L0007912584 should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 1, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

**FINDINGS OF FACT:** (1) Penske Commercial Vehicles, LLC employed claimant as an apprentice collision technician from May 30, 2023, through December 3, 2024.

(2) The employer's attendance policy required employees to notify their supervisor of an absence at least a day in advance, when possible. When advance notice was not possible, the policy required employees to notify their supervisor of the absence as soon possible.

(3) Throughout his employment, claimant accrued as many as 26 violations of the employer's attendance policy.

(4) On November 15, 2024, claimant and his partner received a notice from their landlord stating that they were required to pay one month's rent by November 25, 2024, or else the landlord would begin eviction proceedings. At the time, claimant and his partner did not have enough money to pay the rent, but claimant began working side jobs to earn rent money so that they could pay the rent by the deadline.

(5) On November 18, 2024, the employer gave claimant a final warning regarding his attendance. On November 20, 2024, claimant left work early because he received a call from his child's school informing him that his child was sick, and claimant had to pick up and care for his child. On November 21, 2024, claimant was absent from work because he needed to stay home and care for his sick child.

(6) On November 25, 2024, claimant was scheduled to work from 8:30 a.m. to 5:00 p.m. Claimant arrived at work at his scheduled time. Before starting his workday, claimant had arranged that his partner would be handling the rent matter with their landlord, as they had earned enough at that point to pay their rent. However, at approximately 1:00 p.m., claimant's partner informed him that she was not able to handle the matter with their landlord because she needed to care for her father. Claimant considered what to do, as he did not wish to leave work early but needed to get to the bank and meet with his landlord before the bank closed at 5:00 p.m. At about 2:30 p.m., after considering what to do, claimant spoke to his supervisor and told the supervisor that he needed to leave early so that he could go to the bank and talk to his landlord. The supervisor responded by saying "okay" and told claimant "to go," and did not tell claimant that doing so would be a violation of the final warning. Transcript at 27. Claimant left shortly thereafter to go to the bank and speak to his landlord.

(7) Claimant had no further late arrivals, early departures, or absences from work after November 25, 2024. On December 2, 2024, claimant worked his final shift for the employer. On December 3, 2024, the employer discharged claimant because they felt that he had violated their attendance policy by leaving work early on November 25, 2024.

**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 he left work early on November 25, 2024, which they felt constituted a violation of their attendance policy. As a preliminary matter, while the record shows that claimant had accrued as many as 26 other attendance violations previously, it also shows that the November 25, 2024, early departure was the proximate cause of the employer’s decision to discharge claimant. Transcript at 16. For one, the employer’s witness testified as much at hearing. Transcript at 12, 19. Additionally, the record shows that claimant did not have any other potential violations of the employer’s attendance policy after November 25, 2024. Therefore, claimant’s early departure on November 25, 2024, was the proximate cause of the discharge. *See e.g. Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

The order under review concluded that claimant’s decision to leave early that day was misconduct, explaining that claimant’s “choice not to adjust the way he conducted his personal affairs to avoid jeopardizing his continued employment demonstrated indifference to the consequences of the employer’s final warning.” Order No. 25-UI-291653 at 5. The record does not support this conclusion.

First, the record shows that claimant obtained his supervisor’s permission to leave work early. At hearing, the employer’s witness, who spoke to claimant’s supervisor later on November 25, 2024, testified that the supervisor told her that he told claimant “yeah okay” that claimant could leave early, but the witness contended that “it was more like the supervisor was being told than asked to leave early.” Transcript at 31. The employer’s contention here appears to be that claimant’s supervisor did not give claimant permission to leave early, but instead just resigned himself to the fact of claimant’s early departure and did not protest. Whatever the employer’s reason for allowing claimant to leave, it is undisputed that the supervisor told claimant he could leave, and the record shows that the supervisor did not warn claimant on November 25, 2024 that his early departure would violate the employer’s attendance policy. Because the employer gave claimant permission to leave, claimant’s conduct on November 25, 2024 was not a willful or wantonly negligent violation of employer’s expectation.

Further, even if the supervisor explicitly refused claimant permission to leave work early, claimant’s having left work early that day would not have constituted misconduct. For an act or omission to be misconduct, the record must show not only that the individual violated the employer’s expectations willfully or with wanton negligence, but that the employer’s expectations were reasonable. Here, claimant was in a difficult financial situation and he and his family were in imminent danger of eviction proceedings. Claimant had been working extra jobs prior to the landlord’s deadline of November 25, 2024 and had finally earned enough to pay the rent by Monday, November 25, 2024. At the beginning of the day, claimant had arranged for his partner to handle the matter with the bank and the landlord so that he would not have to leave work. However, he learned at about 1:00 p.m. that afternoon that she would be unable to do so because she needed to care for her father. As such, claimant only had notice of his need to leave work approximately four hours before the bank closed. Under such exigent circumstances,

it would not have been reasonable for the employer to deny claimant permission to handle the matter and avoid eviction proceedings.

Furthermore, the fact that claimant originally arranged for his partner to address the matter, spent time trying to figure out how he could address the matter before asking to leave early, and requested permission to leave towards the end of his shift shows that he was not indifferent to the consequences of his actions in deciding to leave early that afternoon. As such, even if claimant's early departure on November 25, 2024, was a violation of the employer's expectations, it was not a willful or wantonly negligent violation because claimant did not act with indifference to the consequences of his leaving early that day.

For the above reasons, claimant's early departure on November 25, 2024, was not a willful or wantonly negligent violation of the standards of behavior that the employer had the right to expect of their employees. 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-291653 is modified, as outlined above.

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

**DATE of Service:** June 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.

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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.

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

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