

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0289

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 26, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0009541505). The employer filed a timely request for hearing. On April 16, 2025, ALJ Hall conducted a hearing, and on April 24, 2025, issued Order No. 25-UI-290538, affirming decision # L0009541505. On May 13, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) TTEC Services Corporation employed claimant as a telephone customer service representative, most recently from September 2022 through January 17, 2025. Claimant was assigned to handle calls for one of the employer's clients that prescribed mental health medications and dispensed them by mail.

(2) The employer expected that their employees would not use profanity when speaking with customers. Claimant understood this expectation.

(3) In January 2025, claimant took a call from a customer who demanded that medication be shipped to him overnight, which was not a service that the client could provide. Claimant and the customer became increasingly frustrated with each other, and while claimant sought support from a supervisor to take over the call, no supervisors were available to do so. Approximately 19 minutes¹ into the call, the customer asked claimant when he would receive a follow-up email, and claimant replied, "I will send it right fucking now." Exhibit 1 at 7. Claimant did not otherwise use foul language during the call.

¹ Claimant testified that this occurred "after about 45 minutes of going back and forth with the customer." Transcript at 14. However, the employer's review of a timestamped recording of the call noted that the statement was made "at approximately minute 19:20." Exhibit 1 at 7. The employer's evidence on this point is more reliable than claimant's "foggy" recollection of the call, and this fact has therefore been found in accordance with the employer's evidence. Transcript at 13.

(4) During the call, claimant was discussing the customer's request with one or more other employees in an online chat, seeking suggestions on how to help the customer. At some point during the call or just after it ended, claimant wrote, "Whoops, he pissed me off and I let slip an F bomb. oh well, I dgaf rn. Night." Exhibit 1 at 8.

(5) The day following the call, the customer complained to the employer's client that claimant had used foul language during the call. The client reviewed a recording of the call, determined that claimant's conduct had violated their standards, and requested that the employer discharge claimant.

(6) On January 17, 2025, the employer discharged claimant for having used foul language during the call. The employer had not previously disciplined claimant or suspected him of any policy violation.

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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). 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).

The employer discharged claimant for using foul language when speaking with a customer. The employer reasonably expected that their employees would not use profanity while speaking with customers, and claimant understood this expectation. Claimant did not dispute that he violated the employer's policy by stating "I will send it right fucking now" to a customer during a call. Transcript at 16.

Claimant explained the difficult circumstances of the call from a "very aggressive" customer who was repeatedly making impossible demands of claimant and was "blaming [claimant] personally" for not being able to satisfy those demands. Transcript at 14. Claimant had requested assistance from supervisors to take over the call multiple times, but none were available to do so. Claimant testified that while "very stressed out and under a lot of pressure," he "let slip" the foul language when the customer "kept pestering me about sending him an email right away." Transcript at 14-15. Despite claimant characterizing his use of foul language as having "let [it] slip," claimant's other efforts to handle the call professionally suggest that, more likely than not, he was conscious of his choice of words. Claimant testified that he knew what he said likely violated the employer's policy "basically as soon as I did it," although he did not expect it to result in his discharge. Transcript at 18-19. Therefore, claimant acted with wanton negligence.

However, claimant's conduct was an isolated instance of poor judgment, and not misconduct. Claimant's conscious use of foul language in speaking with a customer involved poor judgment, but did not exceed poor judgment because it was not illegal or tantamount to illegal, and did not objectively create an irreparable breach of trust or make a continuing employment relationship impossible, such as through theft or dishonesty. The employer maintained that claimant had not otherwise been disciplined or, to their knowledge, used foul language. The employer asserted that claimant "stated that he didn't give a F" about what he had said during the call in the internal group chat moments later, apparently referring to claimant writing "I dgaf rn." Transcript at 8. Claimant's use of what was likely an acronym in a private chat with coworkers is insufficient to show that claimant used foul language a second time in violation of the employer's policy, or that claimant's use of foul language to the customer was part of a pattern of other willful or wantonly negligent conduct. Accordingly, claimant's wantonly negligent use of foul language was isolated, and as an isolated instance of poor judgment, was not 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-290538 is affirmed.

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

DATE of Service: June 11, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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