

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0290**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 25, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective January 8, 2025, through January 24, 2026 (decision # L0009395953).<sup>1</sup> Claimant filed a timely request for hearing. On April 23, 2025, ALJ Murray conducted a hearing, and on April 24, 2025, issued Order No. 25-UI-290561, modifying decision # L0009395953 by concluding that claimant was discharged for misconduct and was disqualified from receiving benefits effective January 5, 2025. On May 14, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's argument in reaching this decision.

**FINDINGS OF FACT:** (1) Hudson Medical Services, Inc. employed claimant as a support specialist from June 24, 2024, through January 14, 2025.

(2) On May 15, 2020, claimant was convicted of two misdemeanors: identity theft and theft in the first degree. As of 2025, claimant had not moved to have the convictions expunged.

(3) In June 2024, the employer's president contacted claimant by telephone to discuss potentially employing her after reviewing her résumé on a website. The employer's billing manager also participated in the call. During the call, claimant was not asked whether she had been convicted of a crime, and claimant did not volunteer that information. Had the employer known of claimant's convictions, they would not have hired her, as her position involved dealing with the sensitive personal information of their customers.

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<sup>1</sup> Decision # L0009395953 stated that claimant was denied benefits from January 8, 2025, through January 24, 2026. However, decision # L0009395953 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 5, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(4) The employer had a written policy prohibiting “providing false or misleading information during the hiring process or at any point during employment.” Exhibit 4 at 161. A copy of this policy was provided to claimant at hire. During the interview process, claimant understood that the employer expected that she would not provide materially false information. The employer did not tell claimant that they expected her to disclose information about her criminal history, and claimant was not aware of any such expectation.

(5) On June 11, 2024, the employer presented a written offer of employment to claimant, which she accepted. Claimant was not required to complete a written employment application, and no inquiry was made into whether she had criminal convictions at that time. The offer stated that claimant’s compensation would include employer-provided health insurance to commence on the first of the month following 60 days of employment, and listed no contingencies for receiving that coverage. As claimant’s employment began on June 24, 2024, the insurance coverage was expected to begin on September 1, 2024.

(6) At the start of her employment, claimant had health coverage through Medicaid administered by Oregon Health Plan (OHP). Claimant mistakenly believed that this was called “COBRA” coverage, and referred to it as such in discussions with the employer. *See, e.g.*, Exhibit 4 at 38. In August 2024, claimant notified OHP that she expected to receive insurance coverage through her employer beginning on September 1, 2024, and would cancel her OHP coverage when she had confirmation that the new coverage was in effect.

(7) The employer did not initiate the process of enrolling claimant in their health insurance plan until October 31, 2024. The enrollment process consisted of claimant and the employer’s president completing an insurance company form. One section of the form entitled “Current and Prior Coverage” was left blank, and while it did not explicitly ask the enrollee to confirm or deny they had other current or prior insurance coverage, it contained space for the enrollee to list details of any current or prior coverage. Exhibit 4 at 46. Claimant left this section blank because she “didn’t know how to fill that out because [she] would be canceling the other coverage as soon as [she] received [her] benefits through [the employer],” and because she “verbally said [to the employer] that [she] had other coverage at the time.” Transcript at 23-24.

(8) On October 31, 2024, before the insurance form was submitted to the insurer, the president emailed claimant asking, “Were you on COBRA because that was not listed on the application?” to which claimant replied, “Not since August so not in the last 30+ days.” Exhibit 4 at 38. The form was submitted to the insurer without changes and claimant’s coverage began the following day. Claimant never received evidence of coverage mailed to her by the employer’s insurer and therefore did not cancel the OHP coverage during her employment.

(9) On November 6, 2024, the employer was served with an order to garnish claimant’s wages to satisfy a warrant for unpaid state income taxes. The employer complied with the order.

(10) On January 3, 2025, the employer was served with a second order to garnish claimant’s wages to satisfy a small claims civil judgment. After being served with this order, the employer decided to investigate claimant’s background, including potential criminal history.

(11) By January 10, 2025, the employer had learned of claimant's misdemeanor convictions and, as a result, decided to discharge her. The president sent claimant text messages that day, and from January 11 through 13, 2025, which were claimant's days off, requesting that claimant contact her, but claimant did not do so.

(12) Also on January 10, 2025, the employer investigated claimant's health insurance usage after they had decided to discharge her for having criminal convictions. The employer came to believe that claimant had maintained her OHP coverage throughout her employment. The employer believed that claimant therefore made material misrepresentations or omissions during the enrollment process in the insurance they provided, and that claimant maintaining Medicaid coverage despite her earnings from the employer and the employer's provision of health insurance necessarily involved "insurance fraud" through misrepresentations to OHP, and constituted additional grounds for discharge. Transcript at 10.

(13) On January 14, 2025, claimant began work in accordance with her usual schedule, and was notified of her discharge moments later. The employer questioned claimant about the convictions, which claimant admitted were valid, though she stated she believed that she was not legally required to disclose them. The employer presented claimant with a letter explaining her discharge which cited "the discovery that your application contained inaccurate information and omitted disclosure of relevant legal issues." Exhibit 4 at 72. The employer did not cite, either verbally or in writing, concerns about claimant's health insurance coverage as a reason for her discharge.

**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 asserted at hearing that they discharged claimant because she "omitted" that she had misdemeanor convictions "during her hiring process," and "failed to disclose" that she had Medicare coverage when enrolling in the employer's health insurance plan. Transcript at 5-6. Claimant partially disputed this assertion, testifying that the employer cited only discovery of her criminal convictions at the time she was discharged, without mention of the insurance issue. Transcript at 20. That the employer's January 14, 2025, letter discharging claimant referred only to the failure to disclose convictions during the hiring process, with no mention of the insurance issue, supports claimant's testimony. Further, the president testified regarding the decision to discharge claimant, "[T]he things started adding up after the two garnishment orders as well as the conviction. That was more than enough, than we needed." Transcript at 10. However, when the president was asked when she first learned of the insurance issue, she testified, "In January," and later testified that it was "discovered at the

same time” as claimant’s convictions. Transcript at 10-11. The president also testified, “[H]er last day of work was Friday [January 10, 2025] which is when I exactly found out about everything else.” Transcript at 12.

To the extent the employer discharged claimant for reasons relating to her insurance coverage, they did not discharge her for misconduct. The employer reasonably expected that their employees would refrain from “providing false or misleading information during the hiring process or at any point during employment,” and claimant understood this expectation. Exhibit 4 at 161. The record shows that, at hire, the employer had agreed to provide claimant with health insurance coverage beginning on September 1, 2024. For reasons not explained in the record, the employer did not begin the enrollment process until October 31, 2024. At the time of claimant’s hire in June 2024, claimant had insurance coverage through Medicaid administered by OHP. The employer asserted that in January 2025, they discovered that claimant had remained covered by OHP throughout her employment. Claimant did not rebut this assertion. The employer believed that claimant’s representations to the employer and their insurer regarding her OHP coverage were false or misleading and therefore violated their policy.

On October 31, 2024, claimant completed and signed an enrollment form for the employer’s insurance plan which contained a section to list other “Current or Prior Coverage,” which claimant left blank. Claimant testified that she did so because she was unsure what to write in that portion of the form, as she intended to discontinue her OHP coverage as soon as she was certain the employer’s coverage was in effect. Transcript at 23-24. Claimant had previously discussed her other coverage with the employer but mistakenly referred to it as “COBRA” rather than Medicaid because she did not fully understand these terms or the nature of her OHP coverage. This prompted the president to ask claimant, just prior to submitting the enrollment form to the insurer with the “Current or Prior Coverage” section blank, whether she still had COBRA coverage. Claimant responded, “Not since August so not in the last 30+ days.” Exhibit 4 at 38. It can reasonably be inferred that claimant was referring to having told OHP in August 2024 that she anticipated being covered by her employer’s plan beginning September 1, 2024, and therefore intended to discontinue her OHP coverage. However, claimant maintained that as of January 2025, she had never received written evidence of insurance from the employer’s insurance plan and did not cancel OHP coverage for that reason. Transcript at 22.

While claimant omitted requested information about other coverage on the enrollment form and provided inaccurate information on that subject to the employer, it was a matter of ordinary negligence based on claimant’s misunderstanding of the form and insurance terminology. Moreover, the record does not suggest that claimant acted with disregard for the employer’s interests, or that the employer’s interests were directly harmed by this error, because the employer was obligated under the terms of the employment agreement to provide claimant with health insurance regardless of whether she had any other coverage. The employer’s primary concern with this issue was their belief that claimant must have been committing “insurance fraud” against OHP by misleading them as to her income and employer-provided insurance coverage in order to qualify for Medicaid coverage. Transcript at 10. However, this was mere speculation, as the employer did not demonstrate they were privy to what claimant did or did not disclose to OHP, or the standards to qualify for their coverage. Accordingly, the employer has not shown misconduct in connection with claimant’s actions regarding health insurance coverage.

The parties did not dispute that the employer discharged claimant for, at least in part, failing to disclose during the hiring process that she had been convicted of misdemeanors involving dishonesty. The order

under review concluded, without resolving a factual dispute as to whether claimant was asked about her criminal history during the hiring process, that claimant was wantonly negligent in failing to deduce that such information would be relevant to the employer and volunteer it to them during the job interview. Order No. 25-UI-290561 at 4-5. The record does not support this conclusion.

The employer had a written policy, discussed above, prohibiting employees from providing “false or misleading” information during the hiring process. As this policy was provided to claimant only after the hiring process concluded, it stands to reason that she was not aware of it *during* the hiring process. However, it is reasonable to infer that claimant understood during the hiring process that the employer expected her to answer their questions truthfully. To the extent the employer also expected job applicants to volunteer during the hiring process that they had been convicted of crimes, the record does not show that claimant knew or should have known of such an expectation, or that this involved a standard of behavior that an employer has the right to expect of an employee. Therefore, the focus of this portion of the misconduct analysis is on whether claimant provided a false or misleading answer to a question posed by the employer about her criminal history during the hiring process.

Both parties agreed that claimant had been convicted of misdemeanors, that those convictions remained undisturbed throughout claimant’s employment, and that the convictions were not disclosed to the employer during the hiring process. The parties disputed whether the employer asked claimant during the hiring process if she had ever been convicted of a crime.

The employer’s January 14, 2025, letter discharging claimant referred to her “application” having contained “inaccurate information” and “omitted disclosure of relevant legal issues.” Exhibit 4 at 72. The employer submitted voluminous documentary evidence at hearing which did not include a written employment application or other certification by claimant regarding her background. *See* Exhibit 4 at 1-173. Claimant testified that the president initially contacted her after reviewing claimant’s résumé on a website and interviewed her by telephone, and that the only application form claimant filled out was a “Basic Employment Information Sheet” sent with the written offer of employment, which did not request any information regarding criminal history. Transcript at 20-21; Exhibit 1 at 2. Claimant denied being asked “at any time [prior to being discharged], either verbally or in writing” about “prior criminal convictions.” Transcript at 21.

In contrast, the president testified, “[W]e asked [claimant] if she had any felony or misdemeanor convictions and she said that she did not have any, which is untrue. And during her employment interview [the employer’s billing manager] was also present on the phone.” Transcript at 13. The president also testified, “And understandably in hiring someone if they were convicted of identity theft and they would be handling credit card information and other financial information for patients you think they would disclose that. And she was actually asked about that situation if she had any felonies or misdemeanors.” Transcript at 14.

The billing manager also testified at hearing and was asked, “[C]an you tell me what you know about either the [OHP] issue or the . . . conviction issue?” and before she responded was told by the ALJ, “[W]e’re not able to take duplicate testimony. So I’ll ask you to confine your testimony to issues that other parties haven’t already covered.” Transcript at 16-17. The billing manager then gave testimony about the OHP issue without mention of what she witnessed during the job interview. Transcript at 17-18. It is possible the billing manager failed to give testimony about claimant’s disclosure of her criminal

history due to the ALJ's admonishment, and that the employer's representative did not pursue that line of questioning for the same reason. The ALJ should therefore have directly inquired of the witness about her recollection of the telephonic job interview and whether claimant was specifically asked if she had been convicted of any misdemeanor, as that fact was contested by the parties.<sup>2</sup>

However, the employer provided an email sent by the billing manager to the president on February 25, 2025, the day decision # L0009395953 was issued, and it stated in its entirety, "During the initial phone call with [claimant and the president], no mention was made regarding any charges or court-related matters." Exhibit 4 at 37. It can reasonably be inferred that this email was created to memorialize the billing manager's recollection of the telephonic job interview in anticipation of litigating claimant's claim for unemployment insurance benefits, and that it therefore contained all the details she remembered about that interview. Further, it can be inferred that if the ALJ had conducted a more specific inquiry of the witness on this subject, her testimony would not have differed from what she wrote in the email. Therefore, the record shows that the billing manager's recollection of the interview was only that "no mention was made" of claimant having a criminal history.

In weighing this evidence, the president's testimony that she recalled specifically asking claimant if she had been convicted of a misdemeanor and the billing manager's recollection that claimant's criminal history was not "mention[ed]" during the interview are no more than equally balanced with claimant's testimony that she was not asked at all about whether she had been convicted of a crime. As the employer bears the burden of proof by a preponderance of the evidence, that burden has not been met, and the facts have been found in accordance with claimant's account. Therefore, the employer did not ask claimant during the hiring process, or at any time prior to the employer's decision to discharge her, whether she had been convicted of a crime, and claimant did not falsely deny having been convicted of misdemeanors. Moreover, claimant's failure to volunteer that information during the hiring process did not constitute a willful or wantonly negligent violation of a reasonable employer policy. Accordingly, the employer has not shown 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-290561 is set aside, as outlined above.

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

**DATE of Service:** June 17, 2025

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<sup>2</sup> ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Though the ALJ's admonishment may have had the unintended effect of omitting from the record the billing manager's testimony regarding what she heard during the telephonic job interview, testimony on that issue was invited generally, and at the conclusion of her testimony she was asked, "And is there anything else you'd like me to know at this time?" Transcript at 14. Furthermore, because the billing manager's account of the interview was introduced through other documentary evidence, as will be discussed later, the hearing record shows a full and fair inquiry into the issues.

**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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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.