

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0307

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 24, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving unemployment insurance benefits effective March 23, 2025 (decision # L0010447419).¹ Claimant filed a timely request for hearing. On May 12, 2025, ALJ Griffith conducted a hearing, and on May 19, 2025, issued Order No. 25-UI-292666, affirming decision # L0010447419. On May 25, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Stone Soup PDX employed claimant from September 2022 until March 25, 2025. Claimant worked as a coordinator in the employer's program department. That department managed a program in which the employer offered culinary training to individuals experiencing barriers to employment.

(2) The employer expected employees to comply with their supervisor's instructions and requests for information. The employer's employee manual contained a policy stating that insubordination or refusal to perform instructions could result in an employee being discharged. Claimant received and signed the employee manual and was aware of the policy.

(3) The employer's program manager was claimant's direct supervisor. On January 31, 2025, the employer's then program manager stopped working for the employer, and, on a temporary basis, the employer's executive director became claimant's direct supervisor. At that time, the executive director planned to update and implement changes to the culinary training program, such as increasing the number of individuals who participated in the program. Claimant disagreed with those changes.

¹ Decision # L0010447419 stated that claimant was denied benefits from March 23, 2025, to March 21, 2026. However, decision # L0010447419 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 23, 2025, and until they earned four times their weekly benefit amount. *See* ORS 657.176.

(4) On February 25, 2025, the employer placed claimant on a performance improvement plan. The employer placed claimant on the plan because the employer perceived claimant as being unprofessional in their communications with staff and unsupportive of the executive director's program changes. The plan, which was in writing and which claimant signed, called for claimant to "focus on improving communication" and to "[a]ddress concerns in a solution-oriented way[.]" Transcript at 12. Under the plan, claimant was to have weekly meetings with the employer's executive director and human resources (HR) representative. The plan specified that the employer could terminate claimant's employment if improvement in claimant's communication did not occur. The plan was intended to last 60 days and conclude with a review.

(5) Thereafter, the executive director and HR representative held weekly meetings with claimant for each of the weeks beginning March 2, March 9, and March 16, 2025. Because the executive director and HR representative were less familiar with the training program than claimant, the weekly meetings involved the two attempting to "tak[e] [a] deeper dive and understand[] things that [claimant] was doing" to manage the program. Transcript at 30.

(6) In each of the weekly meetings occurring the weeks beginning March 2, March 9, and March 16, 2025, the executive director and HR representative asked claimant specific questions about the program, including how the program's wait list worked. In each meeting, claimant refused to answer the questions, telling the executive director and the HR representative to "read the written documentation" on the program or that claimant did not believe it was their job "to train the executive director," and the HR representative did not need to know the information requested. Transcript at 8, 24, 25, 26-27, 30.

(7) On March 17, 2025, the employer hired a new program manager who took over as claimant's direct supervisor. On March 21, 2025, the executive director, HR representative, and claimant's new manager met and determined that claimant had not shown improvement following the imposition of the performance improvement plan and that discharging claimant was warranted.

(8) On March 25, 2025, the employer discharged claimant. The employer presented claimant with a termination letter at that time, which cited "continued instances of insubordination" and "failure to meet the expectations outlined" in claimant's performance improvement plan as warranting discharge. Transcript at 16.

CONCLUSIONS AND REASONS: The employer discharged claimant 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 [their] conduct and knew or should have known that [their] 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).

Claimant violated the employer’s expectations with at least wanton negligence. The employer expected claimant to comply with their supervisor’s instructions and requests for information. This expectation was conveyed to claimant via the employee manual, which claimant received and signed, and which stated that insubordination or refusal to perform a command could result in an employee being discharged. The February 25, 2025, performance improvement plan, which claimant also signed and which called for claimant to “focus on improving communication” and to “[a]ddress concerns in a solution-oriented way,” reinforced that the employer prohibited claimant from refusing to provide information to or communicating with supervisors in an insubordinate manner. Transcript at 12.

Thus, claimant knew or should have known that refusing to answer the executive director’s questions about the culinary training program would probably result in a violation of the employer’s standards of behavior. The record shows that, with indifference to the consequence of their actions and while conscious of their conduct, claimant repeatedly refused to answer questions during weekly meetings with the executive director. In each of the weekly meetings occurring the weeks beginning March 2, March 9, and March 16, 2025, the executive director and HR representative asked claimant specific questions about the program. Most of these meetings occurred during a time in which the executive director was acting as manager of the program and claimant’s direct supervisor. In each meeting, claimant refused to answer the questions, telling the executive director and the HR representative to “read the written documentation” on the program or that claimant did not believe it was their job “to train the executive director,” and the HR representative did not need to know the information requested. Transcript at 8, 24, 25, 26-27, 30. In so doing, claimant was insubordinate, and repeatedly violated the

employer's expectation that they communicate in a "solution-oriented way" and comply with requests for information.

The employer discharged claimant for these violations. On March 21, 2025, the executive director, HR representative, and claimant's new manager met and decided that discharging claimant was warranted because they had not shown improvement following the imposition of the performance improvement plan. The employer then discharged claimant on March 25, 2025, citing in their termination letter claimant's "continued instances of insubordination" and "failure to meet the expectations outlined" in the plan. Transcript at 16. Accordingly, the employer discharged claimant for wantonly negligent violations of their standards of behavior.

Claimant's wantonly negligent violations 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). However, in each of the weekly meetings occurring the weeks beginning March 2, March 9, and March 16, 2025, claimant refused to answer the questions asked by the executive director and HR representative about the training program. Claimant's actions were therefore a repeated 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.

Claimant's conduct in refusing to answer questions also was not a good faith error. The record does not contain evidence that claimant was operating under a mistaken understanding about whether the employer would find their refusal to answer questions acceptable or that they violated the employer's expectation to benefit the employer or advance the employer's interests. The performance improvement plan emphasized the importance of claimant's need to be supportive of the executive director. Regardless, although the employer's expectation that claimant assist the employer by answering questions related to the program and claimant's job duties was reasonable, claimant conceded at hearing that they did not answer questions because they felt it was "not my job to train the executive director about how I do my job" and that they were dissatisfied with the "additional demands of [their] role." Transcript at 24, 30.

For the reasons outlined above, the employer discharged claimant for misconduct. Claimant is therefore disqualified from receiving unemployment insurance benefits effective March 23, 2025.

DECISION: Order No. 25-UI-292666 is affirmed.

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

DATE of Service: June 27, 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.

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