

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0313

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 20, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0009838796). The employer filed a timely request for hearing. On May 6, 2025, ALJ Parnell conducted a hearing, and on May 7, 2025, issued Order No. 25-UI-291636, affirming decision # L0009838796. On May 27, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument because they did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019).¹

FINDINGS OF FACT: (1) Justworks Employment Group, LLC, as an employee management firm contracted with Staff Made Right, LLC, employed claimant as a clinical social work associate (CSWA) from May 15, 2024, through February 20, 2025.

(2) Claimant's work required an active CSWA license from the Oregon Board of Licensed Social Workers ("the board"). The employer expected that their CSWA employees would maintain required licensure, and claimant understood this expectation.

(3) Claimant first obtained her CSWA license shortly before being hired by the employer and understood that it would expire on November 30, 2024, if not renewed. One of the conditions to maintain licensure was to submit reports regarding her work, jointly prepared with a supervisor, every six months. As claimant was in her initial period of licensure and lacked detailed familiarity with applicable requirements, claimant believed that her supervisor would keep her apprised of, and assist her with meeting, all licensure requirements, including to renew her license.

¹ Pages 4-16 of the argument were duplicative of Exhibit 1, which EAB considered in reaching this decision.

(4) To renew a CSWA license, the board required the licensee to pay a fee on their website. The board did not send licensees an invoice, reminder, or instructions on how to pay the fee. At her supervisor's direction, claimant completed the six-month report due November 30, 2024, and believed this was the only action required for the board to renew her license. Claimant's supervisor did not advise claimant about the renewal fee or attempt to verify whether it had been paid, or verify whether the license was successfully renewed.

(5) On November 30, 2024, claimant's license expired due to her failure to pay the renewal fee. Both claimant and the employer were unaware that the license had expired and believed it had been renewed. The board did not immediately notify claimant or the employer that her license had expired.

(6) On February 20, 2025, the board emailed claimant and the employer, stating that claimant's CSWA license had expired on November 30, 2024, and that claimant had been practicing without a license in violation of applicable laws and rules since that date. The email instructed claimant on how to reapply for a license, and stated that the period of unlicensed practice would be considered against her in deciding whether to grant her a new license. It also stated, "[I]t is your responsibility to know the regulations of your license or certification to practice. Your supervisors should be there to assist you on your path to licensure and reminding you of the requirements to maintain compliance." Exhibit 1 at 3. Regarding reapplying for a license, the email instructed, "Include in your [application] the measures you and your supervisor(s) will be taking to ensure that this will not happen again[.]" Exhibit 1 at 3.

(7) Upon receiving the email, claimant believed it was sent in error as she thought her license had been renewed. After verifying that her license had actually expired, claimant applied for a new license, including paying the applicable fee, on February 21, 2025. As of the date of the hearing, a decision had not been made on whether to grant the application.

(8) Upon the employer's receipt of the email and verification that it had not been sent in error, they notified claimant of her discharge with immediate effect, and claimant did not work for the employer after February 20, 2025. The employer discharged claimant because she lacked licensure to perform her job. The employer was required by the board to refund the approximately \$85,000 in fees paid by insurers to the employer for clients treated by claimant while she was unlicensed.

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 willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(3)(a)(c).

OAR 877-020-0012 (August 9, 2022) provides, in relevant part:

* * *

(8) A licensed clinical social worker or other person authorized by the board who agrees to supervise an associate must:

- (a) Submit to the board at intervals not to exceed six months an evaluation of the associate's progress toward completion of the plan, on a form provided by the board;
- (b) Report to the board in writing immediately if the associate is not complying with the plan of practice and supervision;
- (c) Report to the board in writing immediately if the relationship between the supervisor and the associate ends earlier than the date provided for in the Plan; and
- (d) Make other reports as required by the board.

* * *

The employer discharged claimant because, after November 30, 2024, she failed to maintain a license necessary to the performance of her occupation. The employer reasonably expected claimant to maintain licensure, and claimant understood this expectation. The employer did not assert, and the evidence does not suggest, that claimant willfully failed to renew her license, as both parties were surprised to learn on February 20, 2025, that the license had not been renewed. Therefore, under OAR 471-030-0038(3)(a)(c), the misconduct analysis turns on whether claimant was wantonly negligent in failing to renew the license.

Claimant was in her initial period of licensure when she began working for the employer, and therefore had not previously experienced the license renewal process. Claimant testified that she “received nothing” from the board regarding renewing her license prior to its expiration, or to receiving the February 20, 2025, email. Transcript at 20. Claimant was aware that her initial license would expire at the end of the month following her birthday, which was November 30, 2024, but testified that she believed that the reports jointly prepared with her supervisor and submitted to the board every six months were the only requirements for renewal and that she “had thought [she] had turned everything in that [she] was supposed to turn in” for the license to be renewed. Transcript at 17-18. Claimant further testified that she “wasn’t aware” prior to the February 20, 2025, email that she had been required to pay a renewal fee to the board without prompting. Transcript at 18. Claimant explained that she “was relying on [her] supervision’s guidance” regarding the renewal process. Transcript at 20.

The employer generally did not rebut claimant's testimony, but asserted that it was claimant's sole responsibility to renew the license and that her failure to do so evinced wanton negligence. The record shows that claimant understood her duty to maintain the license but misunderstood what the renewal process entailed and was mistaken as to whether the license had been renewed. The rule setting forth the duties of a supervisor of a CSWA licensee suggests that the supervisor assumes significant responsibility over ensuring the licensee's compliance with applicable rules and statutes. *See* OAR 877-020-0012(7). Further, though not explicitly stated in the rule, the February 20, 2025, email from the board suggested that the board had expected claimant's supervisor to "remind [her] of the requirements to maintain compliance" with applicable rules and statutes, to include renewal of her license. Exhibit 1 at 3. Therefore, claimant's reliance, at least in part, on her supervisor to verify that she had completed all renewal requirements prior to the expiration of her license was reasonable.

Moreover, the record does not show that claimant ignored any warning signs that her license would not be renewed at the end of its term, or acted with indifference to the consequences of failing to ensure that it would be renewed. Serious and easily anticipated consequences from claimant's failure to renew her license flowed to both parties. It is not reasonable to infer that in failing to ensure her license had been renewed that claimant was indifferent to these consequences, which included the loss of her license, potential legal liability from clients or the state for practicing without a license, being discharged from her job, being unable to work in her profession for an extended period, and possibly being denied a new license for having violated the law. Therefore, the employer has not shown by a preponderance of the evidence that claimant's failure to renew the license was wantonly negligent. Accordingly, claimant was not 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-291636 is affirmed.

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

DATE of Service: June 26, 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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