

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0319

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 31, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, disqualifying claimant from receiving benefits beginning February 23, 2025 (decision # L0010079541).¹ Claimant filed a timely request for hearing. On May 27, 2025, ALJ Fair conducted a hearing, and on May 28, 2025, issued Order No. 25-UI-293369, reversing decision # L001079541 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On June 2, 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).

FINDINGS OF FACT: (1) Deus Machine, LLC employed claimant in information technology support until February 27, 2025.

(2) The employer expected their employees to report for work on time and notify the employer prior to the start of their shift if they would be late or absent from work. Claimant understood this expectation.

(3) On October 31, 2023, the employer placed claimant on a performance improvement plan (PIP) after he was late or absent from work on several occasions without notifying his supervisor prior to the start of the shift.

¹ Decision # L0010079541 stated that claimant was denied benefits from March 2, 2025 to February 28, 2026. However, as decision # L0010079541 found that claimant was discharged on February 26, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 23, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(4) In late January 2025, claimant's doctor changed the medication he took for depression and anxiety. Claimant had been treated for those conditions for approximately five or six years at that point.

(5) On February 14, 2025, claimant was late for work without notifying his supervisor prior to the start of the shift. Claimant received a written warning regarding this instance of tardiness.

(6) On February 25, 2025, while claimant was at work, he "had a breakdown and started crying and went home because [he was] embarrassed." Exhibit 1 at 7. That afternoon, claimant messaged his supervisor about what happened, as he had not notified the supervisor prior to leaving. The supervisor responded, in relevant part, "Take the day and feel better. I will be out of the office tomorrow." Exhibit 1 at 7.

(7) After arriving at home on February 25, 2025, claimant felt he was experiencing a "mental health emergency" of "nonstop panic attacks and things." Transcript at 9. Claimant felt that he was unable to communicate with anyone, including family members, or seek additional treatment, and was "in bed all day." Transcript at 9-10. Claimant's condition persisted through the following evening.

(8) On February 26, 2025, claimant had been scheduled to work but, due to his condition, did not report to work or notify the employer that he would be absent. Later that evening, when his symptoms began to subside, claimant began to worry about having missed work without notice. Claimant did not attempt to contact the employer at that time.

(9) On February 27, 2025, claimant reported for work at the scheduled time. Later that day, the employer discharged claimant for having been absent from work without notice the previous day.

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). Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because he was absent from work on February 26, 2025, without notice. Though claimant had been disciplined on prior occasions for violations of the employer's attendance policy, most recently on February 14, 2025, the initial focus of the discharge analysis is on the proximate cause of discharge, which was the February 26, 2025, absence. *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); *See generally* June 27, 2005,

Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division (the last occurrence of an attendance policy violation is considered the reason for the discharge).

The employer reasonably expected their employees to report for work on time and notify the employer prior to the start of their shift if they would be late or absent from work, and claimant understood this expectation. Claimant did not dispute that he was absent from work on February 26, 2025, and did not notify the employer in advance that he would be absent. The employer had been aware that claimant left work early the day prior for reasons related to his mental health, and claimant's testimony described symptoms lasting from the afternoon of February 25, 2025, through the evening of February 26, 2025, that prevented him from working. Therefore, because claimant was absent from work due to illness or mental disability, the absence itself did not constitute misconduct pursuant to OAR 471-030-0038(3)(b).

However, claimant's failure to notify the employer of his absence is not specifically addressed by that provision of the rule, and the standard misconduct analysis applies. Claimant did not dispute that he made no attempt to notify the employer in advance of his absence. Claimant explained that in the midst of a "mental health emergency" after leaving work on February 25, 2025, he "couldn't make any decisions" and experienced "really chaotic, disorganized thoughts where [he] couldn't think straight." Transcript at 9-10. Claimant testified that he was "completely shut down and in bed all day" with "uncontrollable" crying, and was unable to seek help or communicate with anyone by any means, including his parents. Transcript at 9-10. Claimant further testified that he remained in this state until the evening of February 26, 2025, when he first began to worry about the consequences of having missed work that day. Transcript at 11.

It is reasonable to infer from claimant's testimony that his mental health condition prevented him from consciously deciding whether to notify the employer that he would be absent on February 26, 2025, before the start of his shift, and from weighing the potential consequences of failing to do so. It was well after the policy violation occurred, in the evening after the missed shift, that claimant either realized that he had missed work, or was first capable of contemplating the consequences of having done so. Therefore, claimant's failure to timely notify the employer of his absence was neither willful nor wantonly negligent. Accordingly, claimant's violation of the employer's attendance policy on February 26, 2025, 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 discharge.

DECISION: Order No. 25-UI-293369 is affirmed.

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

DATE of Service: July 2, 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 الإستئناف 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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
 Email: appealsboard@employ.oregon.gov
 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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