EO: Intrastate
BYE: 28-Feb-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

509
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0323

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 11, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving benefits beginning February 9, 2025 (decision # L0010421618).[1] Claimant filed a timely request for hearing. On May 14, 2025, ALJ Griffith conducted a hearing, and on May 16, 2025, issued Order No. 25-UI-292489, reversing decision # L0010421618 by concluding that claimant was discharged, but not for misconduct and not disqualified from receiving benefits based on the discharge. On June 3, 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) Lowe's Home Centers LLC employed claimant as a sales specialist in the millwork department of one of their stores from May 5, 2023, to February 14, 2025.

(2) The employer expected employees to arrive for their shifts at the start time listed on the employer's work schedule, with a six-minute grace period.

(3) Claimant had attention deficit hyperactivity disorder (ADHD). On October 30, 2024, the employer granted claimant an accommodation under the Americans with Disabilities Act (ADA) for her ADHD condition. Among other things, the accommodation allowed claimant to be 15 minutes late for a scheduled shift with no penalty. Claimant's ADA accommodation in combination with the six-minute

[1] Decision # L0010421618 stated that claimant was denied benefits from February 9, 2025, to February 28, 2026. However, decision # L0010421618 should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 9, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

grace period meant that claimant could be 21 minutes late for a scheduled shift without violating the employer's expectations.

(4) On December 29, 2024, claimant received a disciplinary write-up for allegedly violating their attendance expectations on several occasions that month. Claimant used a workplace procedure to appeal this write-up, which caused the employer to begin an investigation.

(5) On January 24, 2025, claimant met with her assistant store manager. During the meeting, the manager approved claimant to work a "temporary eight-hour flexible schedule" for the shifts she was scheduled to work through January 31, 2025. Transcript at 23.

(6) Claimant was scheduled to work a ten-hour shift on January 30, 2025, from 8:00 a.m. to 6:00 p.m. The manager told claimant that she could "reduce [her] schedule from 10 hours to eight" on those dates so long as she communicated "with the manager on duty . . . about leaving early[.]" Transcript at 25. The manager further told claimant that he would not formally change her shifts scheduled for January 25 and 30, 2025 to eight hours on the schedule, because doing so would negatively impact an employee who drafted the work schedule.

(7) The employer believed claimant was more than 21 minutes late for her shifts on several occasions in late December 2024 and January 2025.

(8) On January 30, 2025, claimant arrived for her scheduled shift at 8:43 a.m., worked for eight hours, and after completing the eight hours of work, let her manager know she was leaving, then left. Although claimant's shift appeared on the schedule as beginning at 8:00 a.m. and ending at 6:00 p.m., claimant believed that the permission her manager had given to work a reduced eight-hour shift that day enabled her to arrive more than 21 minutes after 8:00 a.m., as long as she worked eight hours upon reporting for her shift.

(9) On February 14, 2025, the employer discharged claimant. On that date, the employer provided claimant a disciplinary write-up listing five occasions in late December 2024 and January 2025 in which the employer believed claimant had violated their expectations by being more than 21 minutes late for her shifts. The final occurrence listed on the write-up was claimant's arrival on January 30, 2025, at 8:43 a.m.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

At hearing, the employer's principal witness, their human resource business partner, testified that the final incident that resulted in claimant's discharge was the January 30, 2025, occurrence in which claimant arrived at 8:43 a.m. for a shift listed on the work schedule as starting at 8:00 a.m. Transcript at 30. More likely than not, the January 30, 2025, occurrence was the incident without which the discharge would not have occurred when it did. As such, the January 30, 2025, occurrence is the proximate cause of the discharge and the focus of the discharge analysis. *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); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did). *See also* 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 failed to meet their burden to prove that claimant's arrival for work more than 21 minutes after 8:00 a.m. on January 30, 2025, was a willful or wantonly negligent violation of the employer's expectations. Although claimant's January 30, 2025, shift appeared on the schedule as beginning at 8:00 a.m., the record shows that claimant believed that the permission her manager had given to work a reduced eight-hour shift that day enabled her to arrive more than 21 minutes after 8:00 a.m., as long as she worked eight hours upon reporting for her shift and communicated "with the manager on duty . . . about leaving early[.]" Transcript at 25. On January 30, 2025, claimant arrived for her scheduled shift at 8:43 a.m., worked for eight hours, and after completing eight hours of work, let her manager know she was leaving, then left. Claimant's conduct on January 30, 2025, therefore was in accord with what she believed the employer had permitted her to do.

The employer did not rebut that claimant received permission to work a reduced eight-hour shift on January 30, 2025. At hearing, claimant testified, unrebutted, that on January 24, 2025, her manager gave her permission to "reduce [her] schedule from 10 hours to eight" on January 30, 2025, with the only requirement being that she communicate "with the manager on duty . . . about leaving early[.]" Transcript at 25. Claimant also testified, unrebutted, that the manager told her that he would not formally change her January 30, 2025, shift to eight hours on the work schedule, because doing so would negatively impact another employee.

It does not necessarily follow from claimant's description of the January 24, 2025, meeting that the manager intended the permission he gave for claimant to work an eight-hour shift as including the flexibility for claimant to arrive at 8:43 a.m., as opposed to arriving within 21 minutes of 8:00 a.m. and simply ending the 10-hour shift two hours early. However, claimant credibly testified that she "had been given flexibility to adjust [her] hours [as] needed;" that she "absolutely" believed that the manager had authorized her arriving at 8:43 a.m.; and that she "believed that [she] was following what was expected, what was discussed, and did not believe [she] was violating any type of policy at all." Transcript at 24, 26, 26-27. The employer did not offer evidence to contradict that claimant believed in good faith that she was permitted to arrive at 8:43 a.m. on January 30, 2025.

Thus, the employer failed to meet their burden to prove that claimant violated their expectations willfully by arriving for work at 8:43 a.m. on January 30, 2025, because they did not show that claimant consciously their expectations by arriving for work at that time. Likewise, the employer did not meet their burden to prove that claimant's conduct was wantonly negligent, as the record fails to show that claimant should have known that arriving for work at 8:43 a.m. probably violated the employer's expectations, or that claimant's arrival at that time was the result of indifference to the consequences of her actions, and not a good faith error.

For these reasons, the employer failed to show that claimant's arrival for work at 8:43 a.m. was willful or wantonly negligent, and not a good faith error. The employer therefore failed to establish that claimant's discharge was for misconduct, and claimant is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-292489 is affirmed.

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

DATE of Service: July 10, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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