

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0325

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 26, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits beginning January 26, 2025 (decision # L0009449730).¹ Claimant filed a timely request for hearing. On April 28 and May 12, 2025, ALJ Griffith conducted a hearing, and on May 20, 2025, issued Order No. 25-UI-292825, affirming decision # L0009449730. On June 5, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) CBRE, Inc. & Affiliates employed claimant as a data center technician from June 18, 2018 through January 31, 2025.

(2) The employer had written policies prohibiting employees from “harassing, threatening, intimidating, bullying or coercing any other person, employee, client, vendor, or visitor,” or engaging in “insubordination,” including “refusal to do assigned work or refusal to perform work in a manner described by a supervisor without justification.” April 28, 2025 Transcript at 23, 27. Claimant understood these policies.

(3) On October 24, 2024, claimant attended a meeting with his new supervisor, D., who had begun working for the employer on October 21, 2024. D.’s supervisor, M., and another manager were present. During the meeting, D. asked claimant to look over an asset list with him that claimant had worked on extensively, and to which D. had made minor, non-substantive changes. Claimant became “very upset,” got “very close” to D., and “raised his voice a little bit.” May 12, 2025 Transcript at 26. Claimant “refused to do the work that [D.] asked him to do.” May 12, 2025 Transcript at 31. D. was so “shocked”

¹ Decision # L0009449730 stated that claimant was denied benefits from January 26, 2025 to January 31, 2026. However, decision # L0009449730 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 26, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

by claimant's behavior that he did not know how to respond, and M. therefore issued a verbal warning to claimant regarding respecting his supervisor's authority and working together as a team. May 12, 2025 Transcript at 31.

(4) Following the October 24, 2024 warning, the employer believed that claimant continued to engage in inappropriate behavior, such as raising his voice, slamming doors, and displaying combative and condescending attitudes toward his supervisor and a coworker, M.T. Claimant did not receive additional warnings regarding this alleged behavior.

(5) On Friday, January 24, 2025, D. was in his office, shared with claimant and M.T., reviewing a document that had been created in 2019, but which D. believed contained information helpful to an issue he was currently working on. Claimant asked D. what he was reading, and after he responded, claimant walked over to D.'s desk, grabbed the document out of his hand, and told D. that he "[had] no business having the doc[ument] because [claimant] created it, and it belonged to [claimant]." Exhibit 1 at 3. D. told claimant that the document belonged to the employer and not any individual employee, and then left the office for his lunch break.

(6) After D. returned from lunch at approximately 2:30 p.m., claimant approached him and asked for an update on the status of a contract important to the project claimant was working on. D. explained that final details of the agreement were being negotiated and that he expected the contract to be executed within a matter of days. Claimant was dissatisfied with this answer, and asked D. to take an alternate course of action while the contract remained unsigned. When D. refused, claimant "jumped to his feet, red in the face" and while standing "with his face inches from [D.'s face]" said, "Now you listen to me, [D.]." Exhibit 1 at 3. D. stepped backwards and directed claimant to close the office door, as he intended to reprimand claimant.

(7) D. admonished claimant about his behavior and said that the conversation could not continue in that manner. Claimant persisted in "demanding" that D. "immediately" take the alternate course of action claimant proposed. Exhibit 1 at 3. D. began packing his belongings to leave work early due to claimant's "hostile/aggressive behaviors," and advised claimant that he would "have to contact [human resources]" regarding his actions that day. Exhibit 1 at 3. D. then left work. The employer's human resources department, located on the East Coast, was closed because it was after 5:00 p.m. there.

(8) After D. left, claimant called M. to tell him about a "run in" with D., referring to the day's events. May 12, 2025 Transcript at 35. Claimant described to M. "taking [documents] out of [D.'s] hands" and having "gotten into his personal space." May 12, 2025 Transcript at 35. In follow-up questioning during the call, claimant admitted to having been "aggressive" toward D. May 12, 2025 Transcript at 36. M. made written notes of the conversation as it occurred. After the call, M. called D. to ask about these events, and D. related an account similar to claimant's. M. directed D. to document the events in writing.

(9) On Monday, January 27, 2025, D. prepared a written complaint to present to M. that included accounts of his interactions with claimant on January 24, 2025, and other recent examples of claimant's alleged misbehavior. On January 28, 2025, M. forwarded D.'s complaint, along with a written complaint

from M.T. about claimant's behavior over the preceding two months, to the employer's human resources representative.²

(10) On January 31, 2025, the employer discharged claimant for having allegedly violated their policies prohibiting "insubordination" and "harassing, threatening, intimidating [or] bullying" on January 24, 2025. April 28, 2025 Transcript at 23, 27.

CONCLUSIONS AND REASONS: Claimant was discharged 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).

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).

² M.T.'s complaint did not specifically mention the events of January 24, 2025. See Exhibit 1 at 6-7.

OAR 471-030-0038(1)(d).

The employer discharged claimant for his actions toward his supervisor on January 24, 2025. While in deciding to discharge claimant the employer considered this behavior in the context of other similar alleged misbehavior occurring over the preceding three months, the initial focus of the discharge analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009; *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). Here, the proximate cause of discharge was claimant's behavior on January 24, 2025.

The employer reasonably prohibited employees from "harassing, threatening, intimidating, bullying or coercing any other person, employee, client, vendor, or visitor," or engaging in "insubordination," including "refusal to do assigned work or refusal to perform work in a manner described by a supervisor without justification." April 28, 2025 Transcript at 23, 27. Claimant understood these policies through having received them in writing.

At hearing, the parties gave differing accounts of the events of January 24, 2025. D. testified that he was in his office, reading a document that had been created in 2019 because he believed it had relevance to a current issue he was dealing with.³ According to D.'s testimony, when claimant learned of the nature of the document, he "physically took it out of [D.'s] hand. . . after approaching [D.] very, very quickly and aggressively. . . and said it belonged to him and that [D.] had no need reading it." April 28, 2025 Transcript at 7. D. took a lunch break shortly thereafter, and upon his return, claimant questioned him about the status of a proposed contract with one of the employer's vendors that was important to a project claimant was working on. D. explained the status of the contract negotiations, which claimant found unsatisfactory, and claimant "made several demands that [D.] do something about it immediately." April 28, 2025 Transcript at 11. Claimant "jumped to his feet, red in the face [and] quickly approached [D.]" April 28, 2025 Transcript at 12. D. "had to raise [his] tone just a little bit. . . to get him to stop," and directed claimant to "shut the door [to] get him to stop and calm down." May 12, 2025 Transcript at 27. Claimant persisted in being "aggressive," causing D. to "not feel comfortable to be the office with him at that point," and to tell claimant that he was "disappointed" and going to leave for the day. May 12, 2025 Transcript at 27. D. testified that he recounted these events to his supervisor, M., when M. called him later that day. May 12, 2025 Transcript at 18-19.

D.'s testimony was largely consistent with the written complaint he submitted to his supervisor on January 27, 2025.⁴ *See Exhibit 1* at 3-4. Additionally, M. testified that what D. told him by telephone on January 24, 2025 about the day's events was consistent with the written account. May 12, 2025 Transcript at 37.

³ D. initially testified that these events occurred on January 27, 2025, and also wrote in his complaint to human resources that they occurred on that date, but later clarified that they occurred on January 24, 2025. May 25, 2025 Transcript at 16.

⁴ The written complaint included the additional details that just prior to directing claimant to close the door, claimant, while standing "with his face inches from [D.'s face]" said, "Now you listen to me, [D.]," and that while D. was leaving, he told claimant that he intended to contact human resources about claimant's behavior. *Exhibit 1* at 3. D. was not specifically asked about those details at hearing.

Claimant's testimony regarding these events agreed with D.'s on three key aspects: that claimant "took possession of" the document D. was reading because he believed D. should not have it; during the later conversation about the unexecuted contract, D. directed him to close the office door, then reprimanded him about the way he was speaking to D.; and, that the conversation ended with D. gathering his belongings to leave and telling claimant that he intended to report his conduct to human resources. April 28, 2025 Transcript at 36, 47.

However, claimant's testimony differed from D.'s regarding the details surrounding these events. Claimant testified that D. "handed the document to me. I took it and added it to a pile of. . . old documents. . . and then made both [D. and M.T.] aware that proper documents were on hand for qualified technicians." April 28, 2025 Transcript at 40-41. Claimant also testified that this event took place on January 13, 2025, rather than just before D.'s lunch break on January 24, 2025. April 28, 2025 Transcript at 41. Regarding the interaction that occurred in the afternoon of January 24, 2025, claimant testified that he asked about the status of the contract, and he proposed temporary measures that he felt were necessary while the contract remained unsigned, stating that the "responsibility had fallen on [D.]" to take such measures. May 12, 2025 Transcript at 8. Claimant explained that at "that point in time, [D.] asked me to close the door [a]nd proceeded to. . . tell me that I shouldn't talk to him like that." May 12, 2025 Transcript at 8. According to claimant's testimony, after he closed the door, he repeated his question to D. about taking alternative action on the contract, and "at that point in time, [D.] says, '[W]ell, don't just sit there calmly like that.' And that's when [D.]. . . made the statement of 'I can't work like this. . . I should call Human Resources for a hostile work environment.'" May 12, 2025 Transcript at 8. Claimant agreed that he called M. later on January 24, 2025 to discuss these events, and did not rebut M.'s testimony regarding that telephone conversation, which was based on notes M. took during the call. May 12, 2025 Transcript at 14-15.

In weighing this conflicting evidence, D.'s account is supported by consistent contemporary statements in his telephone call with M. on January 24, 2025 and written complaint on January 27, 2025. In contrast, claimant's statements during his January 24, 2025 telephone call with M. were inconsistent with claimant's testimony at hearing, in that claimant told M. that he had been "aggressive," took the document out of D.'s hands, and got into his personal space, while at hearing claimant asserted that D. left work upset and promising to report him to human resources because he was "sit[ting] there calmly." May 12, 2025 Transcript at 8, 36. It therefore is more likely than not that claimant acted in accordance with D.'s account, and the facts have been found accordingly.

The record suggests that claimant's aggressive behavior was, in part, in pursuit of what he believed were the ultimate goals of the employer and their client. However, he knew or should have known that acting in this manner would likely violate the employer's policies against harassing or intimidating others, and D.'s directive to communicate without aggression. Moreover, as claimant's actions in this regard occurred over the course of an afternoon despite D.'s attempts to de-escalate this situation, it is reasonable to infer that claimant acted consciously and with indifference to the consequences of his actions. Claimant therefore violated the employer's policies with wanton negligence on January 24, 2025.

Claimant's actions on January 24, 2025 involved conscious decisions to act, and those decisions evinced poor judgment. Furthermore, his actions did not exceed mere poor judgment because they were not illegal or tantamount to illegal, and did not constitute a breach of trust that made a continuing

employment relationship impossible, such as through theft or dishonesty. Therefore, whether his actions can be excused as an isolated instance of poor judgment turns on whether they were a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

The employer asserted that on October 24, 2024, claimant engaged in similarly aggressive and insubordinate conduct toward D. for which he received a verbal warning. D. testified that he asked claimant during a meeting that day to look over an asset list with him that claimant had worked on extensively, and to which D. had made minor, non-substantive changes. According to D.'s testimony, claimant refused, became "very aggressive," got "very close" to D., and "raised his voice a bit." May 12, 2025 Transcript at 26. M. testified that during the incident, claimant "was leaning in, raising his voice, red in the face." May 12, 2025 Transcript at 31. M. explained that he "stepped in and explained" to claimant that D. "was his manager and we needed to work together as a team," but when he then asked claimant "whether he was refusing to do the work" D. had requested, claimant did not answer, and it "got heated." May 12, 2025 Transcript at 31.

In rebuttal, claimant was asked at hearing about being warned by M. about "insubordinate behavior" in October 2024, and replied, "I do not have any recollection of a warning in regards to anything directed at [D.]," but recalled "an incident. . . regarding a work order system," possibly referring to the events of January 24, 2025. May 12, 2025 Transcript at 5. Claimant then specifically denied having a recollection of the October 2024 incident or warning. May 12, 2025 Transcript at 36.

In weighing this evidence, the first-hand accounts of the employer's witnesses are entitled to greater weight than claimant's lack of recollection of the incident, and the facts have been found accordingly. Therefore, more likely than not, claimant acted with unnecessary aggression toward D. and implicitly refused his reasonable directive, with indifference to the consequences of his actions. Claimant knew or should have known that these actions likely violated the employer's policies against harassing or intimidating others, and insubordination. Accordingly, claimant acted with wanton negligence on October 24, 2024, in an incident so similar to the one three months later for which he was discharged that the latter incident was a repeated act, and not isolated. The employer therefore discharged claimant for misconduct because his wantonly negligent violation of employer policies on January 24, 2025 cannot be excused as an isolated instance of poor judgment.

For these reasons, claimant was discharged for misconduct and disqualified from receiving benefits beginning January 26, 2025.

DECISION: Order No. 25-UI-292825 is affirmed.

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

DATE of Service: July 17, 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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