

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0328**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 11, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective October 6, 2024 (decision # L0007856497).<sup>1</sup> Claimant filed a timely request for hearing. On May 22, 2025, ALJ Bender conducted a hearing, and on May 30, 2025, issued Order No. 25-UI-293650, reversing decision # L0007856497 by concluding that claimant voluntarily quit work with good cause and therefore was not subject to disqualification based on the work separation. On June 5, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer submitted written arguments on June 5, 2025, June 17, 2025, and June 19, 2025. EAB did not consider the employer's June 5, 2025, argument because she did not state that she provided a copy of her argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The employer's June 17 and June 19, 2025, arguments both contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's June 17 and June 19, 2025, arguments that were based on the hearing record.

Claimant submitted a written argument on June 19, 2025. Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's argument that were based on the hearing record.

<sup>1</sup> Decision # L0007856497 stated that claimant was denied benefits from October 6, 2024, to October 4, 2025. However, decision # L0007856497 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 6, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

**FINDINGS OF FACT:** (1) Teresa F. Barnard, doing business as Teresa F. Barnard State Farm Insurance, employed claimant as a licensed sales associate, most recently from December 2023 until October 8, 2024.

(2) Claimant had severe depression. She had been diagnosed with the condition when she was 18 years old and had continued to experience symptoms from the condition thereafter and during all times relevant to this decision. Claimant's depression caused her to experience chronic insomnia and stomach problems. Claimant also had been diagnosed with anxiety and attention deficit hyperactivity disorder (ADHD).

(3) The employer expected claimant to work a full-time schedule, 9:00 a.m. to 5:00 p.m., Monday through Friday. Claimant understood this expectation.

(4) On dozens of occasions in January 2024 through September 2024, claimant was absent from work. Exhibit 1 at 9. Symptoms of depression and claimant's other mental health conditions were the principal cause of her absences, which on some occasions were worsened by life events such as the anniversary of her father's death, and the illness and eventual passing of one of her pets. The employer knew claimant had seen her doctor many times during this period.

(5) On October 7 and October 8, 2024, claimant was absent from work because of symptoms of her depression and other mental health conditions.

(6) On October 8, 2024, after she learned that claimant had failed to report to work that day, the employer determined that she would place claimant on probation. The bases for the planned probation were claimant's absences and alleged insubordination and customer complaints. That day, the employer sent claimant a text message requesting that claimant call her.

(7) On the afternoon of October 8, 2024, claimant saw her doctor to seek treatment for her depression symptoms. During the appointment with her doctor, claimant received a prescription for a new medication and she and her doctor discussed the possibility of claimant taking a medical leave of absence from work. However, during the appointment, the two "hadn't decided yet" whether to pursue a leave of absence. Transcript at 8. After the appointment ended, claimant received the employer's text message requesting a call.

(8) After her doctor's appointment but before calling the employer, claimant determined that she would attempt to take a leave of absence "through the [S]tate" via Paid Leave Oregon. Transcript at 10. Claimant hoped that after such a leave of absence she would be "well enough to work the 40-hour week that [the employer] needed [her] to." Transcript at 25.

(9) Claimant called the employer as requested. In their conversation, the employer told claimant, "I hired you to work Monday through Friday and that hasn't been happening." Transcript at 12. The employer asked claimant, "[A]re you going to be able to work Monday through Friday as you were hired to do . . . 9 to 5[?]" Transcript at 12. Claimant responded that "currently due to [her] health [she] could not." Transcript at 7. The employer then asked, "what about three days a week?" Transcript at 14. Claimant responded that given her "health concerns . . . [she] wasn't sure if [she] could even do the three days a

week.” Transcript at 25. The employer then stated, “well, then I guess you’re done here because . . . I have to have somebody at the office.” Transcript at 13. The two then discussed depositing claimant’s final paycheck and claimant potentially filling in for the employer’s other employees in the future when they took vacations. The employer summarized some of these details in an email that she sent to claimant later that afternoon.

(10) The employer believed that the Family and Medical Leave Act (FMLA) did not apply to her because she had only three employees, including claimant. Transcript at 18, 30-31. If claimant had requested a medical leave of absence, it is unlikely the employer would have granted one voluntarily.<sup>2</sup> However, if claimant had filed a Paid Leave Oregon claim asserting that the state of her mental health constituted a serious health condition, and been deemed eligible for benefits by the Department, the employer would have been required by law to give claimant time off and hold her position while she was on leave.<sup>3</sup>

(11) After the work separation, claimant did not file a Paid Leave Oregon claim because she “no longer had a job.” Transcript at 10.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but not for misconduct.

**Nature of the Work Separation.** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The work separation was a discharge that occurred on October 8, 2024. On that date, claimant failed to report to work. Following an appointment with her doctor that day, claimant called the employer. In their conversation, the employer asked if claimant could work five days per week, and claimant responded that she could not because of her health condition. The employer then asked if claimant could work three days per week and claimant again stated that she could not due to health concerns. This prompted the employer to tell claimant, “well, then I guess you’re done here because . . . I have to have somebody at the office.” Transcript at 13. The two then discussed depositing claimant’s final paycheck and claimant potentially filling in for the employer’s other employees in the future when they took vacations.

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<sup>2</sup> At hearing, when asked whether she would have granted a leave of absence if claimant had requested one, the employer testified that she would have to assess whether she could “tolerate further absence.” Transcript at 18. The employer further stated “we have a lot of pressure from the company to do our jobs and I need to have people doing them. I only had at that point two other employees. And they were already picking up the pieces of a lot of mistakes and a lot of mad customers.” Transcript at 18-19.

<sup>3</sup> See ORS 657B.020; See also Paid Leave Oregon, Small Employers, Learn about your Responsibilities with Paid Leave Oregon, available at <https://paidleave.oregon.gov/employers/small-employers.html> (“**You must: . . . Give eligible employees time off.** You must give your employees time off if Paid Leave approves their Leave. . . . **Hold your employee’s position and role, or something similar.** If your employee has worked for you for more than 90 consecutive days, you must give them either their position or a new position with similar job duties and the same benefits and pay when they return from paid leave.”) (emphases in original).

Some details of the October 8, 2024, phone conversation were disputed by the parties. For example, claimant testified that when the employer asked if claimant could be in the office five days a week, claimant told the employer that she was going to pursue taking a medical leave of absence. Transcript at 5, 24. The employer denied that claimant ever mentioned a leave of absence during their conversation. Transcript at 17-18, 27. Likewise, the employer asserted that during the conversation, claimant stated “never going to happen” or “not going to happen” when the employer asked if she could work the five-day or three-day schedule and stated, “if I ever go back to work it’s not going to be in insurance.” Transcript at 13, 14, 16, 27-28; Exhibit 1 at 11. Claimant denied that she had made these statements. Transcript at 31-32. Accordingly, as the evidence is equally balanced and because neither party bears the burden of proof when assessing the nature of the work separation, we make no findings related to the disputed portions of the October 8, 2024, phone call in favor of either party.

Nevertheless, the record shows that the work separation was a discharge that occurred on October 8, 2024. In the October 8, 2024, call, the employer asked claimant if she was able to work five days per week or three days per week, and in response to both, claimant stated that she could not do so. Though the record fails to show that she mentioned it to the employer, claimant intended to attempt to take a leave of absence via Paid Leave Oregon. Transcript at 10. Claimant hoped that after taking such a leave she would be “well enough to work the 40-hour week that [the employer] needed [her] to.” Transcript at 25. However, after claimant stated that she could not work three days per week, the employer testified that she stated, “well, then I guess you’re done here because . . . I have to have somebody at the office.” Transcript at 13.

Claimant’s desire to keep the employment relationship intact and pursue a leave of absence that would, she hoped, allow her to work a full time schedule for the employer after the leave ended showed that claimant was willing to continue to work for the employer for an additional period of time. The employer’s statement to claimant that “I guess you’re done here because . . . I have to have somebody at the office” showed that the employer was no longer willing to make work available to claimant. Thus, claimant was willing to continue to work for the employer for an additional period of time but, upon the employer telling claimant “I guess you’re done here,” was not allowed to do so by the employer. The work separation therefore was a discharge that occurred on October 8, 2024.

**Discharge.** 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 proximate cause of the discharge was claimant's failure to commit to working a five day per week schedule or three day per week schedule, which she conveyed to the employer during the October 8, 2024, call. Although the employer determined, following claimant's October 8, 2024, absence, that claimant would be placed on probation for her absences as well as for alleged insubordination and customer complaints, these matters were not the proximate cause of the discharge because they gave rise only to a lesser form of discipline (probation) rather than to discharge.<sup>4</sup>

Had claimant not told the employer that she could not work either five or three days per week, the discharge would not have occurred when it did. That was what prompted the employer to discharge claimant by telling her "I guess you're done here[.]" Transcript at 13. Claimant's inability to commit to working five days per week or three days per week was therefore the proximate cause of the discharge and 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).

The employer expected claimant to work a five day a week schedule. During the October 8, 2024, call, the employer reiterated that expectation and offered an alternative three day per week schedule. The expectation that claimant work five days per week or, alternatively, three days per week is generally reasonable. However, claimant's inability to commit to working either schedule given the circumstances was not misconduct.

By advising that she could not comply with either schedule, claimant did not violate a standard of behavior the employer had a right to expect in these circumstances. Claimant had severe depression, and had also been diagnosed with anxiety and ADHD. Her depression caused her to experience chronic insomnia and stomach problems. Claimant was absent from work on dozens of occasions between January and September 2024 due primarily to symptoms of her depression and other mental health conditions. The employer was aware that claimant had seen her doctor many times during that period. Claimant was working with her doctor and had been prescribed a new medication to try the day the work separation occurred. When the employer asked claimant to commit to a five day per week or three day per week schedule, claimant responded that she could not do so due to health concerns. It was not reasonable in these circumstances to expect claimant to commit to a work schedule that she could not comply with because of health concerns. Therefore, even though claimant failed to meet the employer's expectations, claimant's conduct was not a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee.

Even if the employer's expectation that claimant commit to one of the work schedules was reasonable in these circumstances, claimant's inability to do so was not willful or wantonly negligent. Claimant was unable to comply with the employer's expectation due to concerns about her health and not knowing

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<sup>4</sup> To any extent the employer discharged claimant because of her absences on October 7 and October 8, 2024, the discharge was not for misconduct because claimant was absent from work on those dates due to symptoms of her depression and other mental health conditions. Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b). To any extent the employer discharged claimant because of alleged insubordination and customer complaints, the employer did not meet their burden to prove that claimant was discharged for any willful or wantonly negligent violations of the employer's expectations regarding insubordination or violations culminating in customer complaints.

what kind of work schedule she was capable of following while trying to manage her mental health conditions, a medication change, and knowing she may still miss work due to her mental health conditions. As a result, her inability to commit to either work schedule was not willful. Similarly, because health concerns rendered claimant unable to work either schedule, claimant did not act with indifference to the consequences of her actions in declining to commit to either schedule, and so her conduct was not wantonly negligent.

For the reasons discussed above, claimant was discharged, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 25-UI-293650 is affirmed.

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

**DATE of Service:** July 16, 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**

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The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.