

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0350**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 7, 2024, 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 effective March 31, 2024 (decision # L0003976927).<sup>1</sup> Claimant filed a timely request for hearing. On July 15, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 29, 2024. On July 29, 2024, ALJ Wardlow conducted a hearing at which the employer failed to appear. On July 30, 2024, ALJ Wardlow issued Order No. 24-UI-260708, reversing decision # L0003976927 by concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation.

On August 9, 2024, the employer filed a timely request to reopen the July 29, 2024, hearing. On November 1, 2024, OAH served notice of a hearing scheduled for November 15, 2024, on whether to allow the employer's reopen request and, if so, another hearing on the merits of decision # L0003976927. On November 15, 2024, ALJ Hall conducted a hearing at which claimant failed to appear. On November 18, 2024, ALJ Hall issued Order No. 24-UI-273684, allowing the employer's request to reopen, canceling Order No. 24-UI-260708, and affirming decision # L0003976927. On December 9, 2024, Order No. 24-UI-273684 became final without claimant having filed a request to reopen the November 15, 2024, hearing.

On February 16, 2025, claimant file a late request to reopen the November 15, 2024, hearing. ALJ Scott considered claimant's request, and on February 20, 2025, issued Order No. 25-UI-283614, denying the request and leaving Order No. 24-UI-273684 undisturbed. On February 24, 2025, claimant filed an application for review of Order No. 25-UI-283614 with the Employment Appeals Board (EAB). On

<sup>1</sup> Decision # L0003976927 stated that claimant was denied benefits beginning April 14, 2024. However, because decision # L0003976927 asserted that claimant was discharged on April 1, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 31, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

March 26, 2025, EAB issued EAB Decision 2025-EAB-0123, reversing Order No. 25-UI-283614, allowing claimant's late request to reopen the hearing, and remanding the matter for further testimony on the merits.

On May 19, 2025, ALJ Hall conducted a hearing, and on May 27, 2025 issued Order No. 25-UI-293267, re-affirming decision # L0003976927 by concluding that claimant had been discharged for misconduct, and was disqualified from benefits effective March 31, 2024. On June 6, 2025, claimant filed an application for review of Order No. 25-UI-293267 with EAB.

**FINDINGS OF FACT:** (1) Columbia Southern, LLC employed claimant as the manager of their hotel in Shaniko, Oregon from approximately July 27, 2023 through March 19, 2024.

(2) In August 2019, claimant's now-husband pleaded guilty to Online Sexual Corruption of a Child and was sentenced to five years of probation. The terms of his probation restricted him from being in places where children would typically congregate, like little league games and the children's section of the library. However, owing to mitigating circumstances, including a favorable psychological evaluation while in custody which indicated that he did not pose a threat to children, he was not forbidden from being in public where children were present. For example, his probation officer permitted claimant to visit a local amusement park, a place frequented by children and he was allowed to go to a park near claimant's and her husband's home.

(3) In or around mid-December 2023, claimant was hospitalized because of heart-related issues. Around the same time, the employer notified claimant that she would be required to be present at the employer's holiday party that was scheduled at the hotel for the evening December 16, 2023. The party was advertised as a "Santa event," with opportunities for children to take pictures with a man dressed as Santa Claus. May 19, 2025 Transcript at 25. In addition to the main event on the evening of December 16, 2023, a follow-up event, for which she was also required to be present, was scheduled for the morning of December 17, 2023. Claimant told the employer that she did not want to go because she was concerned about her ability to safely attend the party due to her recent hospitalization and resultant fragility and because she would have to make a two-hour round-trip drive from her home to the hotel, in dangerous winter conditions. The employer reiterated that claimant was required to attend the events.

(4) The employer allowed claimant to stay at the hotel overnight on December 16, 2023. However, claimant was required to stay in a room on the second floor, which required her to climb stairs, because the employer needed to keep the only Americans with Disabilities Act (ADA)-compliant room in the hotel available. Claimant could not safely climb the stairs alone.

(5) Despite the fact that the party was advertised as a "Santa event," claimant expected that few children would actually be present. This belief was based on the very small population of the town where the hotel was located—approximately 23 residents, only two of whom were children—the considerable distance between the town and any other neighboring community, the fact that other "Santa events" were being held in neighboring communities at the same time, and the dangerous driving conditions in the area at the time that claimant believed would limit attendance at the party.

(6) Claimant asked her husband if attending the party would violate the terms of his probation, and he told her that it would not. Thereafter, claimant spoke to the employer and told him that she could only

attend the party if she and her husband could both attend and spend the night in the hotel so her husband could assist her climbing the stairs to her room. The employer agreed. Claimant did not disclose her husband's 2019 conviction, or the terms of his probation to the employer, as she felt that it was irrelevant to her own employment. May 19, 2025 Transcript at 9.

(7) On December 16, 2023, claimant and her husband attended the employer's holiday party as planned, without incident. Claimant and her husband took care to make sure that he was not spending time around any of the three children present at the party. The remaining dozen or so attendees of the party were all adults. Claimant's husband's presence at the party was never deemed to be a violation of the terms of his probation or otherwise unlawful.

(8) On March 11, 2024, a member of the community learned about claimant's husband's conviction and posted about it on social media as a warning to other members of the community. The ensuing discussion on social media included information identifying him as claimant's husband, that he had been at the holiday party, and that claimant was the manager of the employer's hotel. At least one commenter indicated that claimant's husband's attendance at the party gave them a negative opinion of the hotel.

(9) Shortly after the social media posts about claimant's husband arose, the employer became aware of them. Thereafter, the employer investigated the matter, learning of claimant's husband's conviction and the terms of his probation by reviewing public records and speaking to her husband's probation officer. The probation officer told the employer that claimant's husband was permitted to be in public places where children were present, but not at children's events, and that he would not have allowed claimant's husband to attend the party if he had asked permission to do so. The probation officer also told the employer that he did not intend to impose sanctions on claimant's husband for having attended the party.

(10) On March 19, 2024, the employer discharged claimant because she had brought her husband to the holiday party while he had "state sanctions as far as being a sex offender to not be around children or minors," and because the subsequent social media posts created "a lot of negative publicity for the hotel." November 15, 2024 Audio Record at 23:30–24:03.

**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).

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).

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

The employer discharged claimant for having brought her husband, who was on probation for having pleaded guilty in 2019 to Online Sexual Corruption of a Child, to a party where children were present, and because later social media posts relating to his attendance at the party resulted in negative publicity for the employer's business. The order under review concluded that this constituted misconduct, explaining that "the employer expected that claimant would not bring someone who pled guilty to a sex crime involving a child to an event oriented towards children," that claimant "had the opportunity to inform the employer about the husband's situation... [but] failed to mention the husband's guilty plea or conditions of his probation," thereby "show[ing] a wantonly negligent violation of the employer's reasonable expectation that employees will not create situations in which the employer could be legally liable to other parties." Order No. 25-UI-293267 at 4–5. The order under review further concluded that claimant's conduct was not an isolated instance of poor judgment because it created an irreparable breach of trust in the employment relationship. Order No. 25-UI-293267 at 5. The record does not support these conclusions.

First, the record does not show that claimant either knew, or reasonably should have known, that the employer expected her to reveal her husband's conviction or probation terms, as neither party gave evidence that any such policy or expectation was ever communicated to claimant. Without such an expectation, it cannot be said that claimant's failure to disclose her husband's conviction or probation terms was a willful or wantonly negligent violation of the employer's expectations. The record does, however, show that claimant was faced with the difficult choice of either refusing to comply with the employer's requirement that she attend the party; or attending the party with her husband there for needed support, knowing that the terms of his probation barred him from attending children's events and the party had been advertised as a "Santa event."

Claimant attended the party so that she could comply with the employer's requirements that she do so. Claimant considered multiple factors relating to the party itself and the terms of her husband's probation. These included that there were unlikely to be many children present; that claimant's husband had been permitted by his probation officer to join claimant at an amusement park frequented by children; that he had been deemed to not be a danger to children; and that he was generally permitted in public places where children were present, including a park near their home. Claimant also made efforts to mitigate any concerns that might arise regarding her husband's attendance, by both confirming with him that his attendance would not violate the terms of his probation, and by ensuring that he did not spend time with or around the children present at the party. Thus, the record shows that claimant acted as she did in an effort to comply with the employer's expectation that she attend the party, and does not show that her conduct constituted a willful or wantonly negligent violation of the employer's expectations.

Likewise, and for similar reasons, while claimant's decision to bring her husband with her to the party may ultimately have harmed the employer's interest due to the negative publicity that resulted from social media posts months later, the record does not show that her having done so was a willful or wantonly negligent disregard of the employer's interest. The record lacks evidence to show or suggest that claimant intentionally took steps to harm the employer's interest in this regard. Even if claimant was aware of such a possibility of reputational harm, however, it cannot be said that she acted with indifference to the possibility that her actions could lead to such consequences. Instead, in light of the considerations and mitigating steps she took, above, the record shows that claimant acted as she did because her husband's attendance at the party was necessary for her to comply with the employer's expectation that she attend the party. As such, claimant's conduct did not constitute a willful or wantonly negligent disregard of the employer's interests.

Finally, even if the record showed that claimant's conduct was willful or wantonly negligent, it was, at worst, an isolated instance of poor judgment. The record does not show that claimant had ever previously engaged in similar conduct, that she had any history of violations of the employer's standards of behavior, or that she had previously acted with disregard for their interests. Thus, claimant's conduct was isolated. The record also does not show that claimant's conduct exceeded mere poor judgment. The conduct did not violate the law, and was not tantamount to unlawful conduct. Despite the order under review so finding, claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position.<sup>2</sup> Nor did claimant's conduct make a continued employment relationship impossible, as it did not impede any essential aspect of the relationship or threaten its continued existence and could not be repeated. Therefore, claimant's decision to bring her husband to the holiday party was, at worst, an isolated instance of poor judgment, which is not misconduct.

For the above 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-293267 is set aside, as outlined above.

---

<sup>2</sup> While the employer might have refused to allow claimant's husband to attend the party if he was aware of the husband's criminal history, the record does not support a finding that claimant's decision not to disclose this to the employer was dishonest per se, but supports the inference that claimant she was not required to disclose this information to the employer.

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

**DATE of Service: July 21, 2025**

**NOTE:** This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



# 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.

**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](mailto:appealsboard@employ.oregon.gov)

Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

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.