

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0371**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective March 2, 2025 (decision # L0010340374).<sup>1</sup> Claimant filed a timely request for hearing. On May 29, 2025, ALJ Jarry conducted a hearing, and on June 2, 2025 issued Order No. 25-UI-293668, reversing decision # L0010340374 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On June 16, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The employer's argument 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 them from offering the information during the hearing.

In particular, the employer included with their argument a document entitled "Hourly Sales By Destination," depicting the amount of sales made at the restaurant at which claimant was working on March 8, 2025. Employer's Written Argument at 2. The employer explained in their written argument that they believed this cast doubt on the veracity of claimant's testimony regarding the events of that evening, and that they did not include the document in their hearing exhibit because they did not anticipate that claimant would testify as she did about that evening. Employer's Written Argument at 1. Regardless of whether the employer anticipated such testimony, however, the employer has not shown that they were prevented from offering the document into the hearing record due to factors or circumstances beyond their reasonable control. As such, the employer's request to admit that document

<sup>1</sup> Decision # L0010340374 stated that claimant was denied benefits from March 2, 2025 to March 7, 2026. However, decision # L0010340374 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 2, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

is denied. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

**FINDINGS OF FACT:** (1) Hamish Investments, Inc. employed claimant as a shift lead at one of their restaurants from July 12, 2023 through March 9, 2025.

(2) The employer's primary menu item was grilled chicken, and the employer therefore considered it important for the restaurant's grill to remain operational until the restaurant closed. Shift leads were not permitted to close the grill early unless directed or given permission by a supervisor.

(3) On several occasions throughout her employment, the employer had concerns about claimant's compliance with some of their policies. On February 11, 2025, the employer issued claimant an "Employee Action Memo" regarding various issues such as claimant not having ensured that enough menu items were prepared, using her phone or headphones while working, taking her break in areas not designated for breaks, and being late for work. Exhibit 1 at 8. On February 26, 2025, the employer issued claimant another "Employee Action Memo" relating to "Late arrivals and schedule manipulation," "Phone/headphone violations," "Closing early and/or running out of chicken," "Office cleanliness/overall store cleanliness," "Overall lack of respect," and "Terrible examples for employees as a shift lead." Exhibit 1 at 6. Despite this, during her tenure for the employer, claimant never closed the grill early without permission from a supervisor. Transcript at 33.

(4) On March 8, 2025, claimant worked a closing shift. Afterwards, claimant's supervisor, the store director, came to believe that the grill had been closed at approximately 8:00 p.m. that night, about an hour earlier than it should have been, based on reports from other employees. The employees did not tell the store director why the grill was allegedly closed early.

(5) On March 9, 2025, the employer discharged claimant because they believed that she had closed the grill early without permission on March 8, 2025.

**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).

The employer discharged claimant because they believed that she had closed the grill early, without permission, on March 8, 2025, violating their expectations that she keep the grill operational until the

store closed unless given permission to do otherwise.<sup>2</sup> This belief was based on reports made to the store director by other employees after that shift. Whether claimant closed the grill early that night without permission is in dispute.

At hearing, the employer's HR director asserted that claimant closed the grill early on March 8, 2025, suggesting that claimant did so in violation of expectations that had been communicated to her previously. Transcript at 6–7. Likewise, the employer's store director testified that the grill had been closed early that night, and that while she had granted other shift leads permission to close the grill early on other occasions, she did not give claimant permission to do so on March 8, 2025. Transcript at 17–18, 49–50. There is no indication in the record that the HR director personally witnessed any of the relevant events on March 8, 2025, and it is unlikely that she did, given that the report of claimant closing the grill early came from other employees who were working with claimant on that shift. Likewise, the store director admitted at hearing that they “don’t have a way of... proving that it was closed other than the fact that employees told [them]” because they did not have cameras in the restaurant. Transcript at 17.

By contrast, claimant testified that she was not certain if she had closed the grill early that night but believed that the events that the employer described had happened on a different night around that period of time, and occurred when overwhelmed by web orders. Transcript at 26, 31. Claimant further testified that, regardless of when whether the grill was closed down early on March 8, 2025 or not, that she never closed the grill early on any occasion without permission. Transcript at 33.

Neither party submitted corroborating evidence to prove or disprove whether claimant closed the grill early without permission on March 8, 2025 and neither of employer's witnesses had firsthand knowledge of the grill being closed early that evening. No employees that were present when the grill was allegedly shut down early, other than claimant, testified at hearing. As such, the record on this point is equally balanced, and the employer therefore has not met their burden to show that claimant acted as alleged on March 8, 2025. As such, the record does not show, by a preponderance of the evidence, that claimant was discharged for violating the employer's policies or expectations by closing the grill early without permission on March 8, 2025. Claimant was therefore discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 25-UI-293668 is affirmed.

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

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<sup>2</sup> The employer also alleged that claimant had accrued multiple other violations of their policies and expectations, including prior instances of closing the grill early without permission, as detailed in the above findings of fact. However, the employer's HR director stated at hearing that claimant's alleged conduct on March 8, 2025 was “definitely” the final incident which led them to discharge her. Transcript at 9. As such, the question of whether claimant was discharged for misconduct first requires a determination of whether the final incident (i.e., the proximate cause) of claimant's discharge was a willful or wantonly negligent violation of the employer's standard of behavior. *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). As explained, the record shows that it was not. As such, it is not necessary to further discuss the allegations of claimant's other policy violations.

**DATE of Service: July 25, 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.

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

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