

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0372

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 14, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore disqualified from receiving unemployment insurance benefits effective February 9, 2025 (decision # L0009730789).¹ Claimant filed a timely request for hearing. On May 14, 2025, ALJ Honea conducted a hearing, and on May 27, 2025, issued Order No. 25-UI-293211, reversing decision # L0009730789 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 considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Salem Health employed claimant as an environmental services assistant from December 4, 2017 through February 13, 2025.

(2) The employer had a written policy prohibiting "unprofessional behavior, language, demeanor, gesture and attitude," which includes behavior that is "intimidating, demanding, harassing, or sexually inappropriate." Transcript at 10. Claimant understood this policy.

(3) On February 3, 2025, claimant was directed to locate a coworker, T., and tell her that she and claimant were to clean a specific room together. Claimant told T. this, but T. stated that she could not help clean the room because she was restricted to light duty and could not mop. Claimant assumed that

¹ Decision # L0009730789 stated that claimant was denied benefits from February 2, 2025 through February 14, 2026. However, as decision # L0009730789 concluded that the work separation occurred on February 13, 2025, it 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.

management was not aware of this restriction, as they had directed claimant to have T. assist her with cleaning the room. Claimant therefore suggested to T. that she provide a doctor's note to management stating that she was restricted from mopping. Claimant reported this to the person who gave the directive, who responded, in T.'s presence, that T.'s only restriction involved lifting and did not preclude mopping. T. then handed a doctor's note to claimant which stated that T.'s only restriction involved lifting. Claimant pointed out this fact to T., and T. agreed with claimant that she should seek another doctor's note that precluded her from mopping. Another employee overheard this conversation and became angry, leading her to complain to the employer that claimant was inappropriately discussing T.'s work restrictions.

(4) Claimant and other employees used work phones to view their cleaning assignments, though there were not enough phones for each employee to have their own. Throughout February 3, 2025, claimant and other employees discussed passing the phones around to view assignments. At some point, claimant asked why, if an employee was restricted to light duty, they should be given a phone on which to receive cleaning assignments. This question formed the basis of the complaint that claimant had inappropriately discussed T.'s work restrictions.

(5) On February 4, 2025, claimant and two coworkers, including the complainant from the February 3, 2025 incident, were in a supply closet preparing carts to use in their cleaning duties. Claimant left the closet while the two other employees remained, "venting about their personal matters." Transcript at 19. The employees later complained to the employer that claimant had set her phone to record audio, then left it behind in the closet to surreptitiously record their conversation. Claimant had not left her phone behind and did not record any of her coworkers' conversations.

(6) On February 5, 2025, a complaint was made that claimant had been arguing with a coworker and that the conversation "got loud" and "might have" involved claimant "cursing." Transcript at 19. In investigating the complaint, claimant said it was "a misunderstanding among coworkers," denied "cursi[ing] at her coworker," and provided the name of a nurse who witnessed the interaction. Transcript at 18-19. The nurse was interviewed during the investigation and "corroborated" that claimant was "being rude and screaming at" the coworker. Transcript at 19. Claimant had not argued with anyone that day, and the coworker claimant was alleged to have been arguing with had left work early, before the argument was alleged to have occurred. Claimant's reference to the "misunderstanding" witnessed by the nurse was in regard to the events of February 3, 2025, when the complainant from that incident became inexplicably angry at claimant regarding the distribution of work phones and claimant walked away without saying anything.

(7) On February 6, 2025, the employer placed claimant on administrative leave due to the complaints against her received over the preceding three days. She remained on this leave through February 13, 2025, when the employer discharged her for having allegedly violated their "unprofessional behavior" policy on February 3, 4, and 5, 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 she “[i]nteract[ed] with others in a socially unacceptable manner” on February 3, 4, and 5, 2025, in violation of their “unprofessional behavior” policy. Transcript at 20. The employer reasonably expected that their employees would not engage in behavior that was “intimidating, demanding, harassing, or sexually inappropriate.” Transcript at 10. Claimant understood this expectation.

The two witnesses who testified on behalf of the employer did not have first-hand knowledge of the events leading to the three complaints against claimant, and based their testimony on their recollections of the complaints and ensuing investigation. The employer asserted that the substance of the February 3, 2025 complaint was that claimant asked why an employee restricted to light duty would need a work phone to view cleaning assignments. Transcript at 18. Claimant did not explicitly deny asking this question, and testified to having several conversations throughout the day with coworkers about passing the phones around, including to T., who was restricted to light duty. Transcript at 25-26. Claimant additionally testified to speaking with T. about cleaning a room together, as directed, and learning that T. thought she had documentation restricting her from mopping, which was different from management’s understanding of T.’s limitations. Transcript at 28. T.’s limitations were then discussed among T., claimant, and other employees, and T. volunteered the documentation to claimant; claimant then explained to T. that it did not preclude mopping and suggested that T. seek such documentation from her doctor if appropriate. Transcript at 28-29.

This complaint against claimant was not necessarily rebutted by, or inconsistent with, claimant’s testimony. However, even assuming both accounts are true, claimant’s conduct cannot objectively be viewed as “intimidating, demanding, harassing, or sexually inappropriate.” The record shows that claimant communicated with T. as directed, made reasonable suggestions or inquiries about how to distribute the limited number of phones among employees, and responded appropriately to information provided by T. about T.’s workplace limitations. Therefore, the employer has not shown by a preponderance of the evidence that claimant violated their “unprofessional behavior” policy on February 3, 2025.

The substance of the February 4, 2025 complaint was that claimant hid her personal phone in a supply closet to surreptitiously record the private conversation of two coworkers. Claimant denied the allegations at hearing, testifying, “I didn’t record that day. Nothing happened. I didn’t work in [the same area of the facility as the coworkers]. . . And I’m not going to leave my cell phone up there because I pay bills with that.” Transcript at 33-34. In weighing these conflicting accounts, claimant’s first-hand testimony is entitled to greater weight than the hearsay accounts of her coworkers, and the facts have been found accordingly. Therefore, claimant did not record her coworkers’ conversation and did not

leave her phone in a supply closet for that purpose. Accordingly, the employer failed to prove that claimant violated their “unprofessional behavior” policy on February 4, 2025.

The substance of the February 5, 2025 complaint was that claimant argued with a coworker “in disagreement about something that was discussed in [a meeting],” which involved claimant screaming at the coworker and using foul language. Transcript at 19. According to the employer, claimant denied having been in an argument or using foul language, and called it a “misunderstanding.” Transcript at 16. Claimant provided the name of a nurse who witnessed the incident, and according to the employer, the nurse corroborated the complainant’s account of claimant “being rude and screaming at her coworker.” Transcript at 17.

At hearing, claimant testified, “[On] February the 5th [the coworker] left work. . . early. I never had a conversation with her. I never said nothing to her.” Transcript at 35. Claimant was asked if she had “any disagreement with any coworkers at all on February 5th,” and claimant testified, “No.” Transcript at 35. Claimant did, however, testify that an incident was witnessed by a nurse, referring to the events of February 3, 2025, when claimant and coworkers were discussing the distribution of work phones. Transcript at 26. Claimant testified that on that occasion, the coworker allegedly involved in the February 5 argument “got mad at” claimant for unknown reasons regarding who should take a phone and was “cussing at” claimant. Transcript at 26. In response, they separated without claimant “say[ing] anything,” and did not speak to each other for the rest of the day. Transcript at 26.

In weighing this evidence, claimant’s first-hand testimony is entitled to greater weight than the hearsay accounts provided by the employer, and the facts have been found accordingly. Therefore, claimant did not loudly argue with a coworker or use foul language toward her on either February 3 or 5, 2025. Accordingly, the employer has not shown by a preponderance of the evidence that claimant violated policy on February 3, 4, or 5, 2025, and she was therefore not discharged for misconduct.

For these 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-293211 is affirmed.

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

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymizmo.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

Website: 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.