EO: Intrastate
BYE: 18-Apr-2026

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

779
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0382

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 23, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant was disqualified from receiving unemployment insurance benefits effective April 27, 2025 (decision # L0010931477).[1] Claimant filed a timely request for hearing. On June 16, 2025, ALJ Griffith conducted a hearing, and on June 20, 2025, issued Order No. 25-UI-295524, reversing decision # L0010931477 by concluding that claimant was discharged, but not for misconduct, and claimant was not disqualified from receiving benefits based on the work separation. On June 24, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer submitted written arguments on June 24 and July 11, 2025. EAB did not consider the employer's June 24, 2025 argument because the employer did not state that they provided a copy of their June 24, 2025 argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The employer's July 11, 2025 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. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered the parts of the employer's July 11, 2025 argument that were based on the hearing record.

FINDINGS OF FACT: (1) Eastern Oregon Center for Independent Living employed claimant as a housing navigator from April 17, 2023 until April 29, 2025.

(2) The employer expected their employees to refrain from using their personal cell phones for work matters. Claimant understood this expectation. However, claimant's supervisor permitted claimant to use her personal cell phone hot spot to connect her work devices to the internet when the employer's internet

[1] Decision # L0010931477 stated that claimant was denied benefits from April 27, 2025 to April 18, 2026. However, decision # L0010931477 should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 27, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

was not working properly or when traveling. The supervisor gave this permission to claimant prior to May 2024, when the employer's office was located at a college. The supervisor never expressly revoked the permission, even after the office moved in May 2024.

(3) On November 25, 2024, during a meeting, the employer's chief financial officer (CFO) remined all staff, including claimant, not to use their personal cell phones for work matters.

(4) On December 3, 2024, the employer's staff, including claimant, received an email from the CFO. Claimant used her personal cell phone to access her work email and send a response to the CFO's email. Afterward, the CFO warned claimant that doing so was a violation of policy, and that additional violations could result in termination of her employment.

(5) On April 16, 2025, the employer's CFO sent claimant an email asking for information regarding clients the employer served. Claimant sent the CFO a reply email stating that she would get the information to the CFO that day. Claimant then sent two more reply emails to the CFO on the same matter. The employer believed claimant sent her initial reply email using her personal cell phone.

(6) Claimant did not send the reply email via her personal cell phone. Rather, on the morning of April 16, 2025, when claimaint received the CFO's email requesting information, the employer's office internet was not working properly. As such, claimant used her personal cell phone's hot spot to connect to the internet, as the supervisor had previously given her permission to do. Claimant sent her reply emails to the CFO that morning via two work laptops and her work cell phone, which were connected to the internet through the hot spot. Claimant's work cell phone did not have hot spot functionality.

(7) Later that morning, operating under the belief that claimant had sent one of her reply emails from her personal cell phone, the CFO sent claimant another email. In her email, the CFO stated that she noticed that claimant had responded to her "initial e-mail by [claimant's] personal cell phone." Transcript at 12. The CFO stated in the email that claimant had been previously warned regarding using her personal cell phone to send work emails and that claimant was being placed on suspension.

(8) When claimant received the email accusing her of sending the reply email via her personal cell phone and suspending her, she did not deny the accusation. She did not do so because she was intimidated by the CFO, sensed that the CFO was angry, and determined to "wait until . . . the suspension" was discussed in a meeting to raise the matter. Transcript at 24.

(9) Claimant remained suspended after April 16, 2025. Claimant emailed the CFO and supervisor on April 23, 2025, seeking to have a meeting about the suspension but one could not be scheduled on that date because the supervisor was unavailable. Claimant arranged to meet with the CFO and the supervisor to discuss the suspension on April 28 and then April 29, 2025, but on each date had to cancel the in-person meetings because she was ill.

(10) The CFO and the supervisor discussed the matter, and determined that claimant should be discharged for allegedly sending the April 16, 2025 reply email via her personal cell phone. On April 29, 2025, after claimant canceled the in-person meeting that day, the CFO called claimant and advised that she was discharged.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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).

At hearing, the employer's CFO testified that she suspended claimant on April 16, 2025 after she noticed that claimant had, she believed, sent a work email via her personal cell phone. Transcript at 11-13. The CFO further testified that she and claimant's supervisor decided to terminate claimant's employment, and after claimant canceled the April 28 and 29, 2025 in-person meetings, the CFO called claimant and advised that she was discharged. Transcript at 14-15, 5-6. Accordingly, claimant's alleged sending of a work email from her personal cell phone on April 16, 2025 was the last instance of alleged misconduct before the discharge and the incident without which the discharge would not have occurred when it did. *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). Therefore, claimant's alleged sending of a work email from her personal cell phone on April 16, 2025 was the proximate cause of the discharge and is the focus of the analysis.

The employer did not meet their burden to prove that the work email claimant sent on April 16, 2025 was sent via her personal cell phone. At hearing, the CFO testified that claimant's personal cell phone was a T-Mobile device and that her work cell phone was a Verizon device. Transcript at 8-9. The CFO further testified that on April 16, 2025, after the CFO sent claimant an email requesting information, claimant replied to the CFO with an email containing a stamp that stated: "sent from her T-Mobile device," which led the CFO to believe that the reply email came from claimant's personal cell phone. Transcript at 11. The CFO stated that claimant sent a few more response emails that lacked the stamp, one of which mentioned that claimant was using her personal cell phone hot spot because of internet difficulties. Transcript at 11-12. CFO testified that she then wrote back, "I noticed that you responded to . . . my initial email by your personal cell phone," and stated that claimant had been warned not to do that previously and was therefore suspended. Transcript at 12.

However, claimant disputed that the work email she sent on April 16, 2025 was sent via her personal cell phone. Claimant testified that on April 16, 2025, she received the CFO's email requesting information but that the employer's office internet was not working properly. Transcript at 38. Claimant stated that she therefore used her personal cell phone's hot spot to connect to the internet, something that her supervisor allowed. Transcript at 22. However, claimant testified, "I did not use my own personal device" but instead sent her response emails to the CFO that morning via two work laptops and her work phone, all three of which were connected to the internet through claimant's personal cell phone hot spot.

Transcript at 22, 39. Claimant further testified that when she received the CFO's email accusing her of sending the email via her personal cell phone and suspending her, she did not deny the accusation because she was intimidated by the CFO, sensed that the CFO was angry, and determined to "wait until . . . the suspension" was discussed in a meeting to raise the matter. Transcript at 24.

The accounts of the CFO and claimant regarding whether the email claimant sent on April 16, 2025 was sent via claimant's personal cell phone are therefore equally balanced. Although claimant's supervisor also testified as a witness for the employer at hearing, he did not offer any testimony on this matter. Claimant's exhibit sheds no light on the matter, and the employer did not offer any documentary evidence as potential exhibits at hearing.[2]

Because the evidence is equally balanced and the employer bears the burden of proof, the weight of the evidence favors claimant's account. The facts have therefore been found in accordance with claimant's account on this point. As such, the record fails to show that the work email claimant sent on April 16, 2025 was sent via her personal cell phone. The employer therefore did not prove that they discharged claimant for a willful or wantonly negligent violation in connection with her sending of the email on April 16, 2025.

To the extent it may be asserted that claimant's use of her personal cell phone to provide a hot spot to connect her work devices to the internet on April 16, 2025 was why the employer discharged claimant, the record fails to show that this conduct was a willful or wantonly negligent violation of the employer's expectations.

Claimant understood that the employer expected their employees to not use their personal cell phones for work matters. Howevever, at hearing, claimant testified that her supervisor had "always allowed" her to use her personal cell phone hot spot to connect to the internet when necessary. Transcript at 22. Claimant stated that the permission to use the hot spot began when the workplace was located at a college and continued after the employer moved their office in the summer of 2024; this office initially did not have internet access, making use of her hot spot essential. Transcript at 37. For his part, the supervisor agreed that he had given claimant permission to use her hot spot when working at the college. Transcript at 29. The supervisor also testified that he did not intend claimant's permission to use the hot spot to continue after the move to the downtown office, but conceded that he never expressly revoked the permission claimant previously had to use the hot spot. Transcript at 31-32.

Thus, the preponderance of the evidence shows that claimant had permission from her supervisor to use her hot spot when necessary. Therefore, though claimant understood the employer's general expectation that their employees not use their personal cell phones for work matters, claimant's use of the hot spot on April 16, 2025, at a time when the office internet was not working properly, was not a willful or wantonly negligent violation of the employer's expectations.

For the reasons outlined above, the employer discharged claimant, but not for misconduct, and claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.
DECISION: Order No. 25-UI-295524 is affirmed.

[2] The employer attached documents to their June 24 and July 11, 2025 written arguments. However, because the documents were not offered or admitted into the hearing record as evidence, EAB is not permitted to consider them.

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

DATE of Service: August 1, 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.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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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.

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