

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0390

Modified
Request to Reopen Allowed
No Disqualification

La Orden Judicial Es Modificada
La Aplicación Para Reabrir la Audiencia Es Permitida
No Descalificación

Este documento incluye información importante que no ha sido traducida al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-378-2077 para obtener servicios de traducción gratuitos.¹

PROCEDURAL HISTORY: On September 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective August 18, 2024 (decision # L0006050360).² Claimant filed a timely request for hearing. On April 17, 2025, the Office of Administrative Hearings (OAH) mailed notice to the parties of a hearing scheduled for May 1, 2025. On May 1, 2025, claimant did not appear for the hearing, and ALJ Parnell issued Order No. 25-UI-291149, dismissing claimant's request for hearing due to his failure to appear at the hearing. On May 6, 2025, claimant filed a timely request to reopen the hearing. On June 12, 2025, ALJ Griffith conducted a hearing interpreted in Spanish, and on June 20, 2025, issued Order No. 25-UI-295484, cancelling Order No. 25-UI-291149, allowing claimant's request to reopen the May 1, 2025 hearing, and affirming decision # L0006050360 concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective August 18, 2024. On

¹ This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-378-2077 to obtain free translation services.

² Decision # L0006050360 stated that claimant was denied benefits from August 18, 2024 to August 16, 2025. However, decision # L0006050360 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 18, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

June 29, 2025, claimant filed an application for review of Order No. 25-UI-295484 with the Employment Appeals Board (EAB).

HISTORIA DEL PROCEDIMIENTO: El 10 de septiembre de 2024, el Departamento de Empleo de Oregón (el Departamento) notificó una decisión administrativa que concluía que el reclamante fue despedido por mala conducta y, por lo tanto, estaba descalificado para recibir beneficios de seguro de desempleo a partir del 18 de agosto de 2024 (decisión No. L0006050360).³ El reclamante presentó una solicitud de audiencia a tiempo. El 17 de abril de 2025, la Oficina de Audiencias Administrativas (OAH) envió a las partes un aviso de una audiencia programada para el 1 de mayo de 2025. El 1 de mayo de 2025, el reclamante no se presentó a la audiencia, y el Juez Administrativo Parnell emitió la Orden No. 25-UI-291149, desestimando la solicitud de audiencia del reclamante por no haber asistido a la audiencia. El 6 de mayo de 2025, el reclamante presentó una solicitud oportuna para reabrir la audiencia. El 12 de junio de 2025, la Jueza Administrativa Griffith llevó a cabo una audiencia que fue interpretada en español, y el 20 de junio de 2025, emitió la Orden No. 25-UI-295484, cancelando la Orden No. 25-UI-291149, permitiendo la solicitud del reclamante para reabrir la audiencia del 1 de mayo de 2025, y afirmando la decisión # L0006050360 que concluía que el reclamante fue despedido por mala conducta y, por lo tanto, estaba descalificado para recibir beneficios de seguro de desempleo a partir del 18 de agosto de 2024. El 29 de junio de 2025, el reclamante presentó una solicitud de revisión de la Orden No. 25-UI-295484 ante la Junta de Apelaciones de Empleo (EAB).

PARTIAL ADOPTION OF ORDER: EAB considered the entire hearing record, including witness testimony and exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-295484 allowing claimant's request to reopen the May 1, 2025 hearing. That part of Order No. 25-UI-295484 is **adopted**. See ORS 657.275(2).

ADOPCIÓN PARCIAL DE LA ORDEN: EAB consideró todo el expediente de la audiencia, incluyendo el testimonio de los testigos y pruebas admitidas como evidencia. EAB está de acuerdo con la parte de la Orden No. 25-UI-295484 que permite la solicitud del reclamante para reabrir la audiencia del 1 de mayo de 2025. Esa parte de la Orden No. 25-UI-295484 es **adoptada**. Ver ORS 657.275(2).

FINDINGS OF FACT: (1) Performance Transportation, LLC employed claimant as a truck driver from March 28, 2022 through August 23, 2024.

(2) The employer expected their drivers to exercise care to avoid collisions. Claimant understood this expectation. The employer used a disciplinary system that assessed points for involvement in collisions the employer considered “preventable,” and exceeding a specified amount of points within a rolling twelve-month period resulted in the driver being discharged. Transcript at 12.

(3) On both December 1, 2023 and July 9, 2024, claimant was involved in collisions the employer considered preventable and for which points were assessed. Following the July 9, 2024 collision,

³ La decisión No. L0006050360 dijo que al reclamante se le negaron los beneficios desde el 18 de agosto de 2024 hasta el 16 de agosto de 2025. Sin embargo, la decisión No. L0006050360 debería haber dicho que el reclamante estaba descalificado para recibir beneficios a partir del domingo el 18 de agosto de 2024 y hasta que él ganara cuatro veces su cantidad de beneficios semanales. ORS 657.176.

claimant's point total was such that any other "preventable" collision occurring before December 1, 2024 would cause claimant to exceed the point limit at which discharge was required.

(4) On August 21, 2024, claimant backed a box truck into a loading dock. Claimant "failed to look at [the] left side mirror" of the truck when he backed up and was therefore unaware that a truck was parked to the left. Transcript at 10. Claimant's truck struck the other truck, causing damage.

(5) Claimant suffered from health issues that regularly disrupted his sleep. Claimant felt that tiredness was a contributing factor in each of the three collisions.

(6) On August 23, 2025, the employer discharged claimant under their disciplinary policy after assessing points for the August 21, 2024 collision.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

CONCLUSIONES Y RAZONES: *El reclamante fue despedido, pero no por mala conducta.*

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 he accumulated points exceeding the amount allowed under their disciplinary policy regarding "preventable" collisions. The employer reasonably expected that their drivers would exercise care to avoid collisions, and claimant understood this expectation. The initial focus of the discharge analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009; *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). The August 21, 2024 collision caused claimant to be assessed points resulting in his discharge under the employer's policy, and it was therefore the proximate cause of discharge.

The order under review concluded that claimant was discharged for misconduct because the final collision was "caused by [claimant] feeling tired" and he was "unfit to drive." Order No. 25-UI-295484 at 5. The record does not support this conclusion. Claimant and the employer agreed that the collision was caused by claimant failing to notice a truck parked on his left because he did not check the left mirror before reversing. While claimant attributed this failure to "[e]xcess work and lack of rest," his tiredness was, at most, a contributing factor rather than the proximate cause of the collision. Transcript at 17. Moreover, the record does not show that claimant consciously decided not to check the mirror or

was indifferent to the consequences of not checking it. Therefore, the collision resulted from ordinary negligence, rather than wanton negligence. Accordingly, claimant's failure to exercise care when driving, though a violation of the employer's expectation, did not constitute misconduct.

In conclusion, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

En conclusión, el reclamante fue despedido, pero no por mala conducta, y no está descalificado para recibir beneficios de seguro de desempleo debido a la separación laboral.

DECISION: Order No. 25-UI-295484 is modified, as outlined in this decision.

DECISIÓN: La Orden No. 25-UI-295484 se modifica, como se detalla en esta decisión.

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

DATE of Service: August 8, 2025

FECHA de Servicio: 8 de agosto de 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.

NOTA: Esta decisión revoca una orden judicial que niega los beneficios al reclamante. Tenga en cuenta que, en la mayoría de los casos, el pago de los beneficios adeudados tardará aproximadamente una semana en completarse.

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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NOTA: Puede apelar esta decisión presentando una Petición de Revisión Judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) **dentro de los 30 días siguientes a la fecha de entrega de esta decisión indicada arriba**. Vea ORS 657.282. Para obtener formularios e información, visite <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> y elija el formulario para "Junta de Apelaciones Laborales". En este sitio web, hay información disponible en español. Puede solicitar un intérprete para la Corte en

<https://web.courts.oregon.gov/osca/clas/CLASRequestFormRedirect.html> También puede comunicarse con la Corte de Apelaciones por teléfono al (503) 986-5555, por fax al (503) 986-5560 o por correo a 1163 State Street, Salem, Oregon 97301.

Por favor, ayúdenos a mejorar nuestro servicio completando una encuesta de servicio al cliente. Para completar la encuesta en línea, vaya a <https://www.surveymoz.com/s3/5552642/EAB-Customer-Service-Survey>. Si no puede completar la encuesta en línea y desea obtener una copia impresa de la encuesta, comuníquese con nuestra oficina.



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

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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.

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