EO: Intrastate
BYE: 08-Mar-2025

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

364
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0406

Modified
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On March 18, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective February 9, 2025 (decision # L0009936430).[1] Claimant filed a timely request for hearing. On May 2, 2025, notice was mailed to the parties that a hearing was scheduled for May 16, 2025. On May 16, 2025, claimant failed to appear at the hearing, and on May 19, 2025 ALJ Chiller issued Order No. 25-UI-292649, dismissing claimant's request for hearing due to his failure to appear. On May 21, 2025, claimant filed a timely request to reopen the hearing. On June 16, 2025, ALJ Chiller conducted a hearing, and on June 20, 2025 issued Order No. 25-UI-295481, allowing claimant's request to reopen the hearing and affirming decision # L0009936430 on the merits. On July 8, 2025, claimant filed an application for review of Order No. 25-UI-295481 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that he provided a copy of his July 8, 2025 argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's July 21, 2025 argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing. *See* ORS 657.275(2). EAB considered any parts of claimant's July 21, 2025 argument that were based on the hearing record.

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-295481 allowing

[1] Decision # L0009936430 stated that claimant was denied benefits from February 9, 2025 to March 8, 2025. However, decision # L0009936430 should have stated that claimant was disqualified from receiving benefits beginning February 9, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

claimant's request to reopen the May 16, 2025 hearing. That part of Order No. 25-UI-295481 is **adopted.** *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Gerber Collision, Inc. employed claimant as the general manager of one of their vehicle repair facilities from April 2024 through February 11, 2025.

(2) The general manager's responsibilities included overseeing and assisting with the work of estimators. Estimators handled the administrative aspects of vehicle repair, including ordering parts, communicating with customers and technicians, and securing insurance reimbursement. Estimators were paid commissions based on each customer file they "closed" by overseeing the repair process through completion. Transcript at 50. The employer's computer system logged each task performed on a file and which employee performed it. The employer expected that if a general manager performed the majority of the administrative work on a file, they would close the file in their own name rather than an estimator's name, and the estimator would not be paid for their work on the file. Claimant did not fully understand this expectation.

(3) In November 2024, claimant hired his son-in-law, J., as an estimator. J. had approximately one year of estimating experience prior to working for the employer, but in a different type of facility. J. was unfamiliar with the employer's procedures and needed additional training for his first few months of work to perform his job. At the time of J.'s hire, the employer had only one other estimator.

(4) On December 2, 2024, the employer issued claimant a written warning and placed him on a 30-day performance improvement plan regarding several points of dissatisfaction with his work. Foremost among these points was the employer's belief that claimant was completing the majority of work on J.'s files yet closing the files in J.'s name, resulting in J. receiving payment for them. This was brought to the employer's attention by the other estimator, who complained that claimant was doing substantial work on J.'s files, but not her files. Claimant believed that he was providing equal assistance to both estimators as dictated by the needs of the business, and that to the extent the logs showed greater activity in J.'s files, this was attributable to claimant training J. Following the warning, claimant understood that the employer expected the estimators, rather than claimant, to perform the majority of work on each file, and that claimant could not act with "favoritism" toward J. by giving assistance to him that was not given to the other estimator. Transcript at 19.

(5) In mid-December 2024, the other estimator quit working for the employer because she felt that claimant continued to complete most of J.'s work, and that this was unfair to her. J. was then the only estimator working at the shop until another was hired in mid-January 2025.

(6) In late January 2025, a sexual harassment complaint was lodged against claimant and he was placed on leave pending investigation. As part of that investigation, the employer reviewed a sample of approximately 20 estimator files completed after the December 2, 2024 warning and before the other estimator quit work in mid-December 2024. Half of the files had been closed by J. and half by the other estimator. Based on this review, the employer believed that claimant continued to perform most of the work on most of J.'s files during this period and decided to discharge claimant for that reason. The sexual harassment complaint and other points of dissatisfaction with claimant's work did not factor into the decision to discharge him.

(7) On February 11, 2025, the employer notified claimant by text of his discharge. Claimant did not work for the employer thereafter.

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 he had done the majority of the work on many of J.'s files following the December 2, 2024 warning. Though the employer had been dissatisfied with several aspects of claimant's work, the employer's witness testified that it was his review of a sample of December 2024 files that caused them to discharge claimant. Transcript at 12-13. 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. Claimant's work on J.'s files following the warning was therefore the proximate cause of discharge.

The order under review concluded that claimant "disproportionately assisted [J.]" with his work following the December 2, 2024 warning, and in so doing, willfully or with wanton negligence violated the employer's expectation that a file only be closed in an estimator's name if that estimator, not the general manager, did the majority of the work. Order No. 25-UI-295481 at 6. The record does not support this conclusion.

The employer's witness testified that the December 2, 2024 written warning provided to claimant stated, in relevant part, "A majority of the administrative work [performed by claimant in files closed by J.] such as writing the preliminary estimates appear to be. . . favoritism based on the relationship. No other teammate was receiving this treatment." Transcript at 19. At hearing, claimant denied having engaged in favoritism both before and after the warning, and denied performing work on J.'s files disproportionately to the other estimator's files, except as dictated by the needs of the business and for purposes of training. Claimant explained that upon receiving the warning he understood the employer's expectation to be that the estimators "need to do the. . . majority of the work" on their files, and that he "never had a chance" to further clarify this expectation. Transcript at 36. Claimant testified that he believed the employer also expected him to prioritize customer service and sales, and understood that he should work on the estimators' files as needed in pursuit of those goals. Transcript at 37.

The employer's witness testified that in late January or early February 2025, he reviewed "about 10 files" closed in J.'s name after the warning and determined that in eight of them, "[claimant] did the

work," while a review of a similar number of the other estimator's files showed "no help" from claimant. Transcript at 51. The witness asserted that J. was a "professional estimator" and that there "shouldn't [have been] any extreme training that need[ed] to be done" with him. Transcript at 22.

In rebuttal, claimant testified, "I've always done the same for each – all the estimators" and "tried to cut back" on assisting them following the warning. Transcript at 41. Claimant explained that he worked on estimators' files for customer service and training reasons. Transcript at 35-36. Claimant further testified that he "actually did more for [the other estimator] at one time because she was the only estimator for over a month and [he] did half [of] her files. . . and she got paid the full commission on that," apparently referring to the time just before J. was hired. Transcript at 37-38. Claimant explained that prior to working for the employer, J. had only been an estimator at another business for approximately a year, and that the employer's processes were "like night and day" compared to estimator work at other businesses, making it necessary for claimant to further train J. Transcript at 42. The employer's witnesses testified that when J. was questioned about claimant's work on his files, J. also stated that it was "training related." Transcript at 21.

In weighing this evidence, the employer has not shown that, more likely than not, claimant provided excessive assistance to J. following the December 2, 2024 warning for reasons that amounted to a willful or wantonly negligent violation of their expectations. The results of the employer's review of a sample of files from early December 2024 were not necessarily inconsistent with claimant's testimony that he generally provided equal assistance to both estimators. Further, claimant provided plausible explanations for the logs showing his substantial work on some of J.'s files as having been necessary for training or customer service purposes, rather than to cause J. to be paid for work J. did not perform.

The written warning focused on claimant not performing work in J.'s files in a manner that could be viewed as favoritism, but the record does not show that claimant knew or should have known that this extended to prohibiting him from performing work on J.'s files in furtherance of ensuring proper customer service and employee training. Similarly, the employer did not show by a preponderance of the evidence that claimant knew or should have known that when he performed substantive work on a file that would be closed in an estimator's name rather than his own, for reasons relating to customer service or training rather than unfairly increasing the estimator's pay, that claimant was expected to close it in his own name and deny the estimator pay for the work they had done. Moreover, to the extent claimant performed excessive work on J.'s files following the written warning, it was in furtherance of one or more competing interests of the employer, and not in disregard of the employer's overarching interests. Therefore, the employer has not shown that claimant willfully or with wanton negligence violated a reasonable expectation. Accordingly, claimant was 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-295481 is set aside, as outlined above.

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

DATE of Service: August 12, 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.

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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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