EO: Intrastate
BYE: 18-Apr-2026

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

659
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0439

Reversed
Disqualification

PROCEDURAL HISTORY: On June 4, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0011041637). The employer filed a timely request for hearing. On July 15, 2025, ALJ Murray conducted a hearing at which claimant failed to appear, and issued Order No. 25-UI-297552, affirming decision # L0011041637. On July 21, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Jackson County School District 6 employed claimant as an educational assistant from May 13, 2024 until April 22, 2025.

(2) The employer expected employees to contact their school's office if they were going to be late for work or absent from a shift. The employer also expected employees to notify and obtain permission from their building administrator if they wished to leave a shift early. On August 28, 2024, claimant was informed of this expectation in a meeting at the beginning of the school year. Claimant was also advised of the expectation via the employer's employee manual, which claimant signed on September 5, 2024.

(3) On or about mid-March 2025, claimant informed the employer they had an illness. The employer requested that claimant notify them each day whether they would be absent or leave early, to enable the employer to get a substitute to cover claimant's shifts. On March 14, 2025, claimant was absent or left their shift early but notified the employer. However, on March 17, March 18, March 19, March 20, and March 21, 2025, claimant was either absent or left their shift early and on each occasion failed to notify the employer.

(4) On April 3, 2025, claimant was late for their shift by 1.67 hours because they overslept. That day, claimant's principal met with claimant and reminded them of the expectation to notify the school office as soon as possible if late or absent from work. Thereafter, the principal sent claimant a summary email that stated, "it is your responsibility to be at your work station at your assigned start time and to follow

all attendance protocols." The email warned that continued violations of the employer's attendance policy could result in termination of claimant's employment.

(5) On April 16, 2025, clamant left their shift early without notifying or obtaining permission from the building administrator. On April 18, 2025, claimant met with the employer's assistant superintendent. The assistant superintendent advised claimant that the employer was considering taking disciplinary action against them because they had left work early without notifying the office or getting permission from the building administrator on April 16, 2025.

(6) On April 21, 2025, claimant did not report to work, and did not call in to alert the office that they would be absent. On April 22, 2025, the employer's assistant superintendent met with claimant and their union representatives. Claimant told the superintendent that they did not report to work or call in to the office on April 21, 2025 because they "slept in." Audio Record at 7:01.

(7) On April 22, 2025, the employer discharged claimant for failing to report to work or call in to alert the office they would be absent on April 21, 2025.

CONCLUSIONS AND REASONS: The employer discharged claimant 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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). The following standards apply to determine whether an "isolated instance of poor judgment" occurred:

> (A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.
>
> (B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).
>
> (C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of

> behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.
>
> (D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

OAR 471-030-0038(1)(d).

The employer discharged claimant for failing to report to work or call in to alert the office they would be absent on April 21, 2025. The order under review concluded that claimant did not violate the employer's policy with wanton negligence, reasoning that claimant overslept on April 21, 2025, and so was not conscious of their conduct of not reporting to work or calling in to alert the office they would be absent. Order No. 25-UI-297552 at 3. The record does not support this conclusion.

The record evidence is sufficient to conclude that claimant's violation of the employer's expectation on April 21, 2025 was wantonly negligent. The record shows that claimant did not report to work or call in to alert the office they would be absent on April 21, 2025 because they slept in. Sleeping in may, in some circumstances, establish that a person lacks consciousness of being late to work or of failing to notify of their tardiness prior the start of their shift. However, here, the mere fact that claimant slept in was not sufficient to negate their consciousness of their conduct of missing an entire shift of work and failing to call in at any point that day to alert the employer of their absence. The employer repeatedly put claimant on notice of their attendance expectations: via a meeting and the employee manual at the start of the school year, during the principal's April 3, 2025 meeting with claimant and follow-up email, and during the assistant superintendent's April 18, 2025 meeting with claimant. Accordingly, claimant knew or should have known that missing an entire shift of work and failing to call in at any point that day to alert the employer of their absence would probably violate the employer's expectations. Notwithstanding the fact that claimant slept in, given that they were absent and did not call in the entire day, the record shows by a preponderance of the evidence that claimant was conscious of their conduct and acted with indifference to the consequences of their actions. Therefore, claimant's conduct on April 21, 2025, was a wantonly negligent violation of the employer's expectations.

Claimant's April 21, 2025 wantonly negligent violation was not an isolated instance of poor judgment. This is so because claimant's April 21, 2025 violation was a repeated act or pattern of wantonly negligent behavior, rather than a single or infrequent occurrence. In mid-March 2025, the employer requested claimant notify them each day whether claimant would be absent or leave work early, to enable the employer, given claimant's illness at the time, to get a substitute to cover claimant's shifts. Claimant complied on March 14, 2025, notifying the employer on that date when they were absent or left early. However, on March 17, March 18, March 19, March 20, and March 21, 2025, claimant was either absent or left their shift early, and on each occasion, failed to notify the employer. These violations were wantonly negligent. The absences or early departures were likely the result of claimant's illness, and absences due to illness are not misconduct.[1] However, claimant was informed of the separate expectation to notify the employer if they were absent or had to leave early, but failed to do so for five

[1] *See* OAR 471-030-0038(3)(b).

consecutive days. The record shows by a preponderance of the evidence that claimant knew or should have known that failing to notify of the absences or early leavings was prohibited, and that claimant was conscious of their conduct and acted with indifference.

Likewise, on April 16, 2025, clamant left their shift early without notifying or obtaining permission from the building administrator. As with the March 17 through 21, 2025 violations, claimant knew or should have known that leaving their shift early without notification or obtain permission was prohibited, and claimant acted consciously and with indifference to the consequences of their actions. Thus, as the March 17 through 21, 2025 violations and April 16, 2025 violation were also wantonly negligent, the record shows that claimant's April 21, 2025 violation was a repeated act or pattern of wantonly negligent behavior and therefore not an isolated instance of poor judgment.

For these reasons, the employer discharged claimant for misconduct. Claimant is therefore disqualified from receiving unemployment insurance benefits effective April 20, 2025.

DECISION: Order No. 25-UI-297552 is set aside, as outlined above.

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

DATE of Service: August 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.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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