

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0491

Reversed
Disqualification

PROCEDURAL HISTORY: On May 13, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective February 16, 2025 (decision # L0011038403).¹ Claimant filed a timely request for hearing. On July 23, 2025, ALJ Bender conducted a hearing, and on August 12, 2025 issued Amended Order No. 25-UI-300385, reversing decision # L0011038403 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On August 8, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).²

WRITTEN ARGUMENT: In their argument, the employer asked EAB to consider additional evidence that was not received into the hearing record. EAB did not consider the evidence in reaching this decision because it was not material to EAB's determination of whether claimant's work separation disqualified her from receiving benefits. *See* OAR 471-041-0090(1)(b)(A) (May 13, 2019). Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Greystone Properties, LLC employed claimant as an administrative assistant from February 2, 2022 through January 28, 2025.

(2) The employer had a written policy stating that their employees must notify their supervisor at least one hour prior to the start of their shift if they would be absent that day. The policy also stated that an

¹ Decision # L0011038403 stated that claimant was denied benefits from February 23, 2025 through February 21, 2026. However, as decision # L0011038403 found that claimant quit on February 17, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 16, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

² Order No. 25-UI-300385 was issued to correct typographical errors in the original order, Order No. 25-UI-299240, which was issued on July 31, 2025. The employer's application for review of Order No. 25-UI-299240 was applied to Order No. 25-UI-300385.

employee absent without notice for three consecutive days would be considered to have abandoned their job. Claimant understood this policy.

(3) In October 2024, claimant was approved for a period of protected leave under Paid Leave Oregon from October 31, 2024 through January 22, 2025, to undergo and recover from surgery.

(4) In November and December 2024, claimant corresponded by email with the employer regarding when she would return to work, but told the employer that she did not know the exact date she planned to return and would tell them after discussing the matter with her surgeon.

(5) On January 21, 2025, claimant's doctor cleared her to return to work on February 3, 2025, and gave her written documentation reflecting that decision. On January 21 or 22, 2025, claimant telephoned the employer's owner at his home number and left a voicemail regarding her return to work. Claimant did not attempt to submit a copy of the doctor's note, email the employer, or leave a message at the business. The employer was unaware of this voicemail and did not attempt to contact claimant regarding her return to work. As such, the employer expected claimant to return to work on January 23, 2025, the day following the expiration of her protected leave. Claimant did not return to work on that date or thereafter.

(6) On January 25 and 26, 2025, claimant was hospitalized for complications related to the surgery. Upon her release from the hospital, claimant felt that she needed approximately two additional weeks off of work. Claimant did not attempt to contact the employer regarding this development.

(7) On January 28, 2025, claimant was absent for a fourth consecutive workday following the expiration of her protected leave. That day, the employer considered claimant to have abandoned her job by having failed to notify them of her absences prior to her shifts on January 23, 24, and 27, 2025. The employer was unwilling to allow claimant to continue working for them on and after January 28, 2025, and made no attempt to ascertain why she had been absent following the end of her protected leave, or to notify her of the work separation. The employer filled claimant's vacant position on February 1, 2025.

(8) On February 13, 2025, claimant emailed the employer stating that she had been cleared to return to work. On February 17, 2025, the employer sent claimant a letter in reply stating that her position had been filled after she failed to communicate with them following the end of the protected leave period, and that she would not be rehired.

CONCLUSIONS AND REASONS: Claimant was discharged for misconduct.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

The employer's attendance policy contained a provision deeming an employee's third consecutive absence without notice to be job abandonment and a voluntary resignation. The employer asserted that

claimant's employment ended pursuant to that policy. However, the nature of the work separation is not determined by the application of such a policy, but by the willingness of the parties to continue the employment relationship.

Despite her prolonged absence from work, claimant gave no affirmative indication to the employer that she was unwilling to continue working for them. Just prior to the expiration of her protected leave period, claimant obtained a clearance letter from her doctor and attempted to contact the owner by telephone to discuss her return to work, which was then anticipated to occur on February 3, 2025. Claimant ultimately informed the employer of her readiness to return to work by email on February 13, 2025. Claimant therefore was continuously willing to work for the employer throughout the events at issue. In contrast, on and after January 28, 2025, the employer was unwilling to allow claimant to return to work because they believed she had violated their attendance policy, and they hired a replacement for her position a short time later. Accordingly, the work separation was a discharge that occurred on January 28, 2025.

Discharge. 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). "[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 because they believed that she failed to notify them prior to her shifts that she would be absent from January 23 through 28, 2025. The order under review concluded that this was not misconduct because claimant did not “intentionally” violate the attendance policy. Order No. 25-UI-300385 at 4. The record does not support this conclusion regarding whether claimant was discharged for misconduct, as claimant violated the attendance policy with wanton negligence.

The employer reasonably expected that their employees would notify their supervisor at least one hour before the start of their shift if they would be absent that day. Claimant understood this policy. On January 23, 24, 27, and 28, 2025, claimant was absent from work at the recommendation of her doctor as she recovered from surgery. Under OAR 471-030-0038(3)(b), absences due to illness or physical disability are not misconduct. However, that provision does not excuse employees from compliance with reasonable policies requiring advance notice of an absence.

The employer understood that claimant would be taking protected leave under Paid Leave Oregon for the maximum period of twelve weeks, concluding on January 22, 2025. On November 10, 2024, the employer emailed claimant asking when she would be cleared to return to work following her surgery. On December 2, 2024, claimant replied, “I will respond to this email shortly with my return to work date and documentation from my surgeon promptly.” Transcript at 14-15. However, neither party attempted to contact the other again until at least January 21, 2025.

Claimant testified that on January 21, 2025, she received written clearance from her doctor to return to work on February 3, 2025, and that on either January 21 or 22, 2025, she made several calls to the owner’s home telephone number, leaving one voicemail. Transcript at 8. Claimant’s testimony described the purpose of the calls as “to discuss returning to work and with the limitations that my surgeon had provided,” but did not state whether the February 3, 2025 return date was mentioned in the voicemail. Transcript at 8. The owner did not testify at hearing, but the employer’s witnesses implied that the employer was unaware of the voicemail and had not heard from claimant since the December 2, 2025 email. *See* Transcript at 14-15. Claimant did not receive any response to the voicemail, or any other communication from the employer, and her next attempt to contact the employer was a February 13, 2025 email.

The voicemail claimant left at the owner’s home telephone number during her protected leave period did not meet the employer’s expectation to be notified in advance of each absence from January 23 through 28, 2025. Even if claimant had stated in the voicemail that she would be not be returning to work as expected on January 23, 2025, she testified that after a brief hospitalization ending on January 26, 2025, she needed an additional “two weeks or so” off work from that date. Transcript at 9. Claimant did not assert that she made any attempt to inform the employer in advance of her January 27 or 28, 2025 shifts of her plans for this extended absence, which differed substantially from her plans at the time of the voicemail to return to work on February 3, 2025. Moreover, given the employer’s lack of response to

claimant's voicemail, it was reasonable to expect under the employer's policy that claimant would have followed up with the employer to ensure that the message was received and each absence excused by the employer before it occurred. Claimant therefore should have known that her failure to submit the January 21, 2025 doctor's note to the employer or make any effort aside from the single voicemail to verify that her absences were excused would likely result in a violation of the employer's expectations. These failures also demonstrated that claimant was indifferent to the consequences of her inaction. Accordingly, claimant violated the employer's attendance notification policy with wanton negligence.

Furthermore, claimant's conduct cannot be excused as an isolated instance of poor judgment. Claimant's failure to notify the employer of her absences cannot be considered a single occurrence, rather than a repeated act or pattern, as claimant was absent without notice for four consecutive shifts from January 23 through 28, 2025. Therefore, claimant's conduct was not isolated and did not fall within the provisions of OAR 471-030-0038(3)(b). Accordingly, claimant was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and disqualified from receiving benefits effective January 26, 2025.

DECISION: Order No. 25-UI-300385 is set aside, as outlined above.

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

DATE of Service: September 16, 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.

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