

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0497

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 19, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective March 23, 2025 (decision # L0010796571).¹ Claimant filed a timely request for hearing. On July 9, 2025, and continued to July 24, 2025, ALJ Murray conducted a hearing, and on July 25, 2025, issued Order No. 25-UI-298766, affirming decision # L0010796571. On August 13, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because they did not state that they provided a copy of their argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Benton County, Oregon employed claimant as a data analyst and property appraiser from February 25, 2019 through March 25, 2025.

(2) The employer maintained a policy which stated, in relevant part, "The standard of conduct for all employees in the County service shall be in the public interest as opposed to individual interests. In order to render the best possible service to the general public and to reflect credit on County service, high standards of conduct are deemed essential. Employment shall be conditional on good behavior and satisfactory performance of assigned duties." Exhibit 1 at 5. The employer provided claimant with a copy of their handbook, which included this policy, when he was hired.

¹ Decision # L0010796571 stated that claimant was denied benefits from March 23, 2025 to March 21, 2026. However, decision # L0010796571 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 23, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

(3) Prior to 2022, the employer was generally satisfied with claimant's performance and conduct at work. On September 8, 2022, the employer issued claimant a "Letter of Expectations" regarding concerns that the employer had with claimant's performance and conduct. Exhibit 1 at 12–13.

(4) On June 23, 2023, the employer issued claimant a "Written Reprimand" regarding a March 2, 2023 incident. Exhibit 1 at 23–29. In that incident, which took place at a Board of Property Tax Appeals (BOPTA) meeting, claimant used his phone at a public meeting to record a video of a member of the public whom claimant felt posed a risk to his own safety. The employer subsequently investigated the matter, and ultimately reprimanded claimant because they determined that he had given "untruthful or misleading information" in the course of the investigation. Exhibit 1 at 28.

(5) In or around February 2024, due to various concerns that claimant had about the management of the department, claimant filed a complaint against his direct supervisor. The supervisor eventually learned that claimant had been the one to file it. Thereafter, claimant felt that his supervisor treated him worse than previously, and that the supervisor had been retaliating against claimant due to the complaint that claimant had filed.

(6) Throughout part of 2024, claimant began taking notes at work which covered, in significant detail, his concerns about the management of the department, including: conflicts between himself and management; ways in which he felt he had been treated unfairly; and allegations of malfeasance on the part of department management, including fraud, favoritism, corruption, and incompetence. Claimant took these notes at the advice of both his union representative and the employer's human resources (HR) department. Claimant sent these notes from his work email address to his personal email address so that he could compile, edit, and format them into a single document ("the 94-page document") that included all of his work-related concerns.

(7) On September 17, 2024, claimant filed another complaint against his supervisor, alleging retaliation in response to his earlier complaint. The employer engaged a third-party investigator to investigate the matter. During the course of the investigation ("the first investigation"), claimant provided the investigator with the 94-page document.

(8) On or around December 3, 2024, towards the conclusion of the first investigation against claimant's supervisor, the employer directed the investigator to conduct a separate investigation ("the second investigation") into claimant's conduct. The results of the second investigation ultimately found, in relevant part, that claimant had "spent considerable time at work creating a document that is not work-related"—i.e., the 94-page document; and that claimant had engaged in "extremely unprofessional conduct towards [his] supervisor" during a September 12, 2024 meeting. Exhibit 1 at 3–4. The former issue included concerns that claimant's colleagues "fear[ed] that [claimant was] actively monitoring their conduct and memorializing it [in the 94-page document] in a light that was deliberately inaccurate and unfavorable... towards them." July 9, 2025 Transcript at 10. The latter included concerns that claimant used insulting language towards his supervisor during the meeting, and "accused him of having a gambling problem." Exhibit 1 at 4.

(9) On December 6, 2024, the investigator released his report for the first investigation, which found that claimant had "engaged in protected whistleblower activity," but that claimant's supervisor had not taken

“any adverse action against [claimant] that would discourage a reasonable person from engaging in protected activity.” July 9, 2025 Transcript at 9.

(10) Claimant last performed work for the employer on December 16, 2024. After that date, the employer placed him on paid administrative leave pending the outcome of the second investigation.

(11) On March 25, 2025, based in part on the findings of the second investigation, the employer discharged claimant because they believed that he had “engaged in a continuing pattern of inappropriate and unprofessional behavior”; had “spent a considerable amount of work hours not completing assigned duties, but rather working on a 94-page narrative”; had been “disrespectful to [his] manager,” and had “created a difficult working environment for [his] colleagues that has negatively impacted the department’s ability to provide mission-critical community services.” Exhibit 1 at 8.

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 “engaged in a continuing pattern of inappropriate and unprofessional behavior”; had “spent a considerable amount of work hours not completing assigned duties, but rather working on a 94-page narrative”; had been “disrespectful to [his] manager,” and had “created a difficult working environment for [his] colleagues that has negatively impacted the department’s ability to provide mission-critical community services.” Exhibit 1 at 8. Despite the breadth of these allegations, the order under review specifically concluded that the employer “discharged claimant for using employer time and equipment to create a 94-page written narrative regarding the employer.” Order No. 25-UI-298766 at 3. The record supports the conclusion that this was the proximate cause of the discharge.

The employer’s documentary evidence included a termination letter, dated March 25, 2025, which broadly indicated two separate reasons for claimant’s discharges: first, the creation of the 94-page document and related concerns; and second, claimant’s alleged conduct during the September 12, 2024 meeting with his supervisor. Exhibit 1 at 2–5. At hearing, the ALJ asked the employer’s witness if claimant would have been discharged if not for his creation of the 94-page document, but the witness responded that she could not answer the question. July 9, 2025 Transcript at 8. Despite the inclusion of both concerns in the discharge letter and the employer’s testimony above, however, the record shows that the proximate cause of claimant’s discharge was his creation of the 94-page document and related concerns.

Regardless of the employer's concerns about claimant's alleged conduct during the September 12, 2024 meeting, the employer knew about this alleged conduct at the time it occurred, as claimant's supervisor was in the meeting. The employer did not discharge claimant, or place him on administrative leave at that time, instead allowing claimant to continue working for another three months. By contrast, shortly after the second investigation (regarding claimant's alleged conduct) commenced, the employer placed claimant on administrative leave. The employer then discharged claimant based, in part, on the findings of the second investigation once that investigation concluded. Although the second investigation's findings included concerns about claimant's alleged conduct during the September 12, 2024 meeting, only the findings regarding claimant's creation of the 94-page document appeared to be both new information to the employer and a cause for the employer to take action. Therefore, claimant's creation of the 94-page document, and related concerns, was the proximate cause of the discharge.²

The order under review further concluded that "[i]n using employer time and equipment to create the narrative rather than performing his job duties, claimant willfully violated the employer's reasonable policy and expectation" that employees "act in the public interest and refrain from prioritizing their own individual interest." Order No. 25-UI-298766 at 4. The record does not support the conclusion that claimant violated the employer's policy willfully or with wanton negligence.

First, claimant arguably did not violate the employer's above-stated policy at all, as its broad wording and lack of specificity do not appear to proscribe the conduct claimant engaged in. For instance, although claimant obviously had a personal interest in the contents of the 94-page document, as it related to his personal employment experiences, much of the document focuses on alleged mismanagement of the department, or alleged willful malfeasance perpetrated by members of management. Given the negative ramifications for the public interest if claimant's allegations in the document were true, it can hardly be said that claimant's detailing of these supposed problems within the department were not in the public interest.

Next, while the employer suggested that claimant was not permitted to work on the document while at work, claimant stated in a written narrative included with his exhibits that his work on the document while at work consisted of taking notes "as directed by Human Resources and his Union." Exhibit 2 at 23. The employer did not rebut this assertion. This shows that the work he did perform on the document while at work was done at the employer's direction. Thus, the employer has not met their burden to show that claimant's work on the document while at work was a violation of their expectations.

Furthermore, even if claimant's work on the document while at work *was* a violation of the employer's expectations, the employer has not shown that claimant either knew or had reason to know of these expectations, because the conduct is not actually delineated in the policies contained within the record. Without a reason to know that the employer expected him not to work on the document at work, claimant could not have willfully, or with wanton negligence, violated such expectations. Therefore, for these reasons, the employer has not shown that claimant's work on the 94-page document at work constituted misconduct.

² 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).

The employer also asserted that claimant spent time creating the 94-page document to the detriment of the performance of his assigned work duties, and that claimant's work on the document while at work "created a difficult working environment for [his] colleagues[.]" July 9, 2025 Transcript at 6–7. Nevertheless, these assertions are not supported by the record. The employer's witness, a human resources analyst, did not appear to have firsthand knowledge of these assertions (or the majority of claimant's alleged conduct), and instead relied on the hearsay accounts of management. The employer did not present witnesses with firsthand knowledge of claimant's alleged conduct, or contemporaneous documentation of any such failure to perform his assigned work duties or negative effects that claimant's conduct had on colleagues in relation to the events which led to claimant's discharge. These assertions, without more specificity or corroborating evidence, are insufficient to show that claimant actually failed to perform his assigned work duties or created a negative work environment for his colleagues. Thus, to the extent that the employer discharged claimant for these reasons, they also have failed to show that these allegations constituted misconduct.

For the above 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-298766 is set aside, as outlined above.

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

DATE of Service: September 25, 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.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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