

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0512

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 9, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, and claimant therefore was disqualified from receiving unemployment insurance benefits effective April 6, 2025 (decision # L0011122231).¹ Claimant filed a timely request for hearing. On July 31, 2025, ALJ Murdock conducted a hearing, and on August 5, 2025, issued Order No. 25-UI-299654, reversing decision # L0011122231 by concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the work separation. On August 25, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), 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.

To the extent the employer intended their written argument to be a request for EAB to consider the additional evidence contained therein under OAR 471-041-0090(1)(b), the request is denied. The principal piece of new information offered in the employer's submission is a report from the employer's time clock software purporting to show that, during her call with the chief operating officer (COO), claimant had checked whether the receptionist was clocked in. The purpose of the information was to rebut claimant's testimony at hearing that during her call with the COO, claimant did not have the time clock software open, did not check the receptionist's time clock status, and told the COO only that the receptionist was "supposed to be" clocked out. Transcript at 21.

¹ Decision # L0011122231 stated that claimant was denied benefits from April 13, 2025 to April 11, 2026. However, as decision # L0011122231 stated that the work separation occurred on April 11, 2025, the administrative decision should have said that claimant was disqualified from receiving benefits beginning Sunday, April 6, 2025 and until she earned four times her weekly benefit amount. See ORS 657.176.

Under OAR 471-041-0090(1)(b), “Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that: (A) The additional evidence is relevant and material to EAB’s determination, and (B) Factors or circumstances beyond the party’s reasonable control prevented the party from offering the additional evidence into the hearing record.”

The employer’s request is denied because they did not assert or show that the time clock report could not have been offered into evidence as an exhibit at hearing. It was foreseeable that claimant might assert at hearing that she had not accessed the time clock software. Because there is no indication that the report could not have been created in advance of the hearing and offered into the hearing record along with the employer’s other documentary evidence, the employer failed to show that factors or circumstances beyond their reasonable control prevented them from offering the additional evidence into the hearing record.

FINDINGS OF FACT: (1) Evergreen Family Medicine, PC employed claimant from June 2, 2016 until April 11, 2025. Claimant worked as a front office manager at the employer’s medical clinic. The employer’s chief operating officer (COO) and human resources (HR) manager supervised claimant.

(2) The employer expected their employees to be honest and truthful in their communications with their supervisors. Claimant understood this expectation.

(3) On February 17, 2025, the employer placed claimant on a performance improvement plan. The plan identified several areas of concern and said that claimant’s employment could be terminated if she did not show improvement in those areas. An area of concern the plan named was that the front office that claimant managed was “an unprofessional and laid-back environment” and showed a “lack of respect to the patients[.]” Claimant signed and acknowledged receipt of the plan on February 17, 2025.

(4) The employer employed a receptionist whom claimant supervised. The receptionist worked at a reception desk next to a patient waiting room in a location downstairs from claimant’s office. The employer watched the reception desk and waiting room with cameras. The COO was able to view the camera footage remotely. Claimant did not have access to the camera footage.

(5) The receptionist had a young son who received care at the employer’s clinic and had an appointment scheduled for the afternoon of April 2, 2025. The employer required employees to clock out if they or a family member were receiving care at the clinic. Claimant expected the receptionist to be clocked out while occupied with her son’s appointment on April 2, 2025. Claimant also scheduled a different employee to cover the reception desk at that time, although for unknown reasons, that employee did not do so.

(6) On the afternoon of April 2, 2025, the COO viewed the reception area through the cameras and saw the receptionist with her son behind the reception desk. At around 4:26 p.m., the COO called claimant and asked if the receptionist was clocked out. Claimant did not have the time clock program open and did not check the receptionist’s status, but believed she was clocked out as required by the employer’s policy. Claimant responded that the receptionist was “supposed to be” clocked out. Transcript at 22.

(7) In fact, the receptionist was clocked in at the time. The COO believed that claimant falsely told her that the receptionist was clocked out, rather than equivocally stating that the receptionist was “supposed to be” clocked out.

(8) The COO asked claimant to check on the child, and claimant stated that she would do so. The call ended, and claimant went downstairs to the reception desk and patient waiting room area.

(9) When claimant entered the area, the child was in the rest room and there were no patients in the waiting room. The receptionist was sitting behind the reception desk, and the other employee whom claimant had scheduled to cover was not present. Claimant asked about the child and the receptionist said that her mother (the child’s grandmother) was going to pick him up. Claimant asked the receptionist to call her mother to confirm, and the receptionist did so. The clinic’s referral office was next door. A referral office employee pulled claimant away to deal with an emergency prescription that had to be filled by the end of the day, and it was after 4:26 p.m.

(10) The COO watched claimant’s interactions with the receptionist and referral office employee via the cameras and called the HR manager. The COO told the HR manager to go to the reception desk. Claimant resolved the emergency prescription issue and walked back over to the reception desk. The child had finished using the restroom and was spinning in a chair next to the receptionist behind the desk. The HR manager then arrived, and saw claimant standing behind the receptionist, with the child spinning in the chair. The HR manager told the receptionist to clock out and wait with her child in the waiting room area.

(11) The employer believed that claimant had lied to the COO about the receptionist’s time clock status. The employer also believed that claimant failed to maintain professionalism in the reception area because the receptionist was clocked in while occupied with the child’s appointment and had the child behind the desk.

(12) On April 11, 2025, the employer discharged claimant. The “final piece” that led to the employer’s decision to discharge claimant was the employer’s belief that claimant had lied to the COO about the receptionist’s time clock status. Transcript at 8, 19.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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).

More likely than not, the proximate cause of the discharge was the employer's belief that claimant had lied to the COO by telling the COO during their call that the receptionist was clocked out. The employer's witness at hearing, the HR manager, testified that claimant's allegedly "not being honest with . . . the COO" was "the final piece" or "the main piece" that led to claimant's discharge. Transcript at 8, 19. Claimant's alleged dishonesty during the call with the COO was therefore the proximate cause of the discharge and the focus of the misconduct analysis. *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 did not meet their burden to prove that they discharged claimant for misconduct. The employer's account, which is reflected in documentary evidence and the testimony of the HR manager (not the COO) reading from those documents, was that claimant was dishonest with the COO during the call on April 2, 2025 by telling her that the receptionist was clocked out. Exhibit 2 at 1; Exhibit 1 at 1; Transcript at 8, 18-19. Claimant's account, based on her firsthand testimony, was that she had merely stated to the COO that the receptionist was *supposed to* be clocked out, and so had not been dishonest. Transcript at 21-22, 27, 30.

Specifically, the employer provided an email statement from the COO in which the COO stated that claimant said that the receptionist "is supposed to be clocked out for an appointment, let me check, which she did and said she was clocked out." Exhibit 2 at 1. An employment termination form the employer gave claimant asserted that, "When the COO asked you about the situation, you were not honest and told her that she [the receptionist] was off the clock." Exhibit 1 at 1. In contrast, claimant testified that she did not have the time clock computer program open when the COO called, did not know whether the receptionist was clocked out, and did not tell the COO that the receptionist was clocked out. Transcript at 21, 23, 26-27. Claimant repeatedly testified that during the call with the COO she had stated only that the receptionist was "supposed to be" off the clock. Transcript at 21-22, 27, 30. She testified that this was so because she knew the receptionist was occupied with her son's appointment and understood that "for appointments and things like that we have to be off the clock." Transcript at 26.

In evaluating the accounts of the parties on this disputed point, the weight of the evidence favors claimant's account because the employer bears the burden of proof and their account is based on hearsay contained in documentary evidence, whereas claimant offered testimony that was based on her personal knowledge. As such, the facts have been found in accordance with claimant's account as to the disputed point of whether claimant was dishonest to the COO during the April 2, 2025 call. The employer therefore did not meet their burden to prove that claimant was dishonest to the COO during the April 2, 2025 call. As such, the employer did not show that their discharge of claimant was for misconduct.

Aspects of the record suggest that the employer considered claimant to have failed to maintain professionalism in her interactions with the receptionist after going downstairs on April 2, 2025, and that this was a factor in the employer's decision to discharge claimant. Claimant was on notice that the employer expected her to maintain professionalism, as it was an area of concern identified in claimant's February 17, 2025 performance improvement plan. To the extent that this alleged violation of the employer's expectations factored into their decision to discharge claimant, the employer did not meet their burden to prove that they discharged claimant for misconduct.

The COO's email statement asserted, based apparently on how claimant appeared on camera, that when claimant went downstairs and approached the receptionist, she treated it "like a social call," and casually visited with the receptionist and the referral clerk next door. Exhibit 2 at 1. Similarly, the employment termination form the employer gave claimant stated, "You told the COO that you would go down and check on them, however when you arrived, you went into the back office for approximately 10 minutes, and did not address the situation with the child." Exhibit 1 at 1. The COO's email statement also stated that claimant did not ask the receptionist to clock out, and that only occurred when the HR manager arrived and told the receptionist to do so. Exhibit 2 at 2. The HR manager testified that when she arrived at the reception area, the receptionist's child was behind the desk spinning in a chair, with claimant standing behind the child. Transcript at 20. The HR manager testified that she asked the receptionist and her child to wait in the adjacent waiting room and told the receptionist to clock out. Transcript at 10.

Claimant testified that when she went downstairs, she did not know whether the receptionist was clocked out but thought she was supposed to be under the employer's policy. Transcript at 26. Claimant stated that she understood the receptionist's plan was to clock out for lunch, pick her son up, bring him to his appointment, and then have the child's grandmother pick up the child, and, afterward, the receptionist would clock back in. Transcript at 22, 26. Claimant testified that she scheduled a different employee to cover the reception desk while the receptionist took the child to the appointment, though she could not recall if the different employee was present at the time she went downstairs, and the weight of the evidence therefore favors that the employee was not present. Transcript at 22, 24, 26. Claimant stated that when she approached the receptionist, there were no patients in the waiting room, and the child was in the restroom and not behind the reception desk. Transcript at 23. Claimant testified that she asked the receptionist to confirm the child's grandmother was coming to pick him up, and the receptionist called the grandmother and did so. Transcript at 23. Claimant testified that she was then "called into the referral area . . . about getting a prescription for a patient that needed to be done before the end of day." Transcript at 23. Claimant testified that after that was resolved she walked back over to the reception desk when the HR manager arrived, and at that time the child was in the chair behind the reception desk. Transcript at 23. Claimant testified that she was not aware that the receptionist was clocked in until the HR manager asked the receptionist to clock out. Transcript at 23-24.

In weighing this evidence, the employer did not prove that claimant failed to maintain professionalism in the reception area willfully or with wanton negligence. Claimant believed, based on the employer's rule, that the receptionist was clocked out at the time claimant went downstairs. By scheduling a different employee to cover for the receptionist, claimant tried to ensure professional decorum was maintained while the receptionist was occupied with her son's appointment. When claimant approached the receptionist, no patients were in the waiting room, the child was in the restroom and not present behind the desk, and claimant had the receptionist confirm the grandmother was going to pick up the child. Based on the employer's expectations, claimant should have at that point verified the receptionist's time clock status, directed her to clock out, and requested that the receptionist and her child wait in the waiting room. However, claimant was quickly pulled away to the referral area to resolve the prescription issue, which was a matter of urgency as it had to be completed by the end of the day, and it was after 4:26 p.m. at the time. When claimant returned to the reception desk, the child was there but, at or near the same time, the HR manager arrived. Given the compressed timeframe and urgency of the prescription issue, the absence of any patients to observe the child behind the desk, and claimant's efforts both to schedule another employee to cover the receptionist and to have the receptionist confirm the grandmother was on her way to pick up the child, claimant did not willfully or wantonly negligently

fail to maintain professionalism. Rather, the lack of professionalism resulting from the child being behind the desk when claimant returned from the referral area and the receptionist being on the clock while waiting to hand the child off to the grandmother, was, at most, the result of ordinary negligence on claimant's part and not sufficient to constitute misconduct.

For the reasons outlined above, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-299654 is affirmed.

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

DATE of Service: September 29, 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.

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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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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