

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0517**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 12, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct and was not disqualified from receiving benefits based on the work separation (decision # L0010728947). The employer filed a timely request for hearing. On August 14, 2025, ALJ Honea conducted a hearing, and on August 22, 2025 issued Order No. 25-UI-301332, reversing decision # L0010728947 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective January 26, 2025. On August 26, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's 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 her 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 claimant's argument that were based on the hearing record.

**FINDINGS OF FACT:** (1) Family Building Blocks, Inc., employed claimant as an outreach home visitor from April 11, 2023 until January 29, 2025. The employer provided early childhood development services to young children at facilities certified by the Oregon Department of Early Learning and Care (DELIC). The employer was subject to administrative rules issued by that agency.

(2) The employer had a workplace policy prohibiting children in their care from being left alone or unsupervised. One of claimant's job tasks was to drive a bus filled with children to one of the employer's facilities. Upon reaching the facility, the employer's protocol required claimant to inspect the left side of the bus and ensure that all children on that side were safely off the bus. A separate employee, a bus monitor, would ensure that all the children on the right side of the bus were safely off the bus. Before exiting the bus, claimant was required to do a final check to ensure that no children remained on the bus. Claimant understood the prohibition against leaving children alone or unsupervised and was familiar with the protocol used to ensure that all children were safely off the bus, as she had received several trainings on it.

(3) DELC administrative rules prohibited the employer from leaving children unattended inside a vehicle. The employer faced significant potential negative repercussions from DELC if a child in their care was left unattended. Such repercussions included the assessment of fines, revocation of their certification to operate, and mandatory posting of the details of incidents at the employer's facilities, which could harm their reputation and cause parents to choose not to place their children with the employer.

(4) On January 27, 2025, claimant drove the bus filled with children to one of the employer's facilities. Claimant parked the bus at the facility, and the bus monitor properly ensured that the children on the right side of the bus were off the bus. Claimant failed to do a final check to ensure that no children remained on the bus, and left a toddler behind on the left side of the bus. The toddler sat alone inside the bus without temperature regulation for almost three hours. Claimant eventually returned to the bus and discovered the child. Later that day, the employer placed claimant on administrative leave pending an investigation into the matter.

(5) On January 28, 2025, the employer self-reported to DELC the incident in which claimant left the toddler on the bus. Exhibit 1 at 4. The same day, the Child Care Licensing Division of DELC concluded that the incident constituted a violation of childcare statutes that was required to be corrected. Exhibit 1 at 5 ("The result of this issue was found **valid and must be corrected by January 28, 2025.**") (emphasis in original).

(6) The employer considered claimant's conduct in leaving the toddler behind on the bus to be a "situation of neglect." Audio Record at 17:08. The employer anticipated claimant's conduct would go on their record with DELC and harm their reputation with parents, as well as potentially result in fines or other repercussions by DELC. The employer concluded that claimant's conduct warranted discharge. On January 29, 2025, the employer discharged claimant.

(7) On January 30, 2025, DELC issued the employer a letter outlining its investigation of claimant's conduct following the employer's self-report. Exhibit 1 at 4-6. The letter advised that the incident was deemed a serious valid complaint and the employer was required to post a letter detailing the incident in their facility for a year. Exhibit 1 at 4-5. The posting was required to be "in an area where it may be clearly viewed by parents." Exhibit 1 at 4. DELC also suspended claimant's "clearance," barring her from working "in any childcare situations." Audio Record at 14:44.

**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).

DELC’s administrative rules and the employer’s workplace policy prohibited children in the employer’s care from being left unattended. Claimant understood this prohibition and was familiar with the employer’s protocol used to ensure that all children were safely off the bus. Nevertheless, on January 27, 2025, claimant failed to follow that protocol by not doing a final check to ensure that no children remained on the bus. As a result, claimant left a toddler behind on the bus, alone, for almost three hours. At hearing, claimant did not assert or show that she failed to do the final check because she simply forgot or due to some other reason that might amount to ordinary negligence. Rather, when asked why she did not check the bus before she got off, claimant testified, “I honestly do not have a reason.” Audio Record at 21:50. Claimant knew the rules that governed her conduct relating to ensuring that all children were off the bus, and absent evidence to the contrary, she likely breached the bus unloading protocol consciously and with indifference to the consequences of her actions. Claimant’s conduct therefore constituted a wantonly negligent violation of the employer’s expectations.

Claimant’s wantonly negligent violation exceeded mere poor judgment and therefore does not fall within the exculpatory provisions of OAR 471-030-0038(3) because it created an irreparable breach of trust in the employment relationship and made a continued employment relationship impossible. Claimant’s conduct created an irreparable breach of trust in the employment relationship because it exposed the employer to repercussions from DELC that risked harming their reputation with parents.

After the employer self-reported the incident, DELC concluded that the incident constituted a violation of childcare statutes that the employer was required to correct. Though the penalty was issued the day after claimant's discharge, DELC imposed a measure requiring the employer to post a letter describing the incident in their facility for a year. The posting was required to be "in an area where it may be clearly viewed by parents." Exhibit 1 at 4. The record supports that this measure could harm the employer's reputation and might cause parents to opt not to place their children in the employer's care.

Claimant's conduct also created an irreparable breach of trust in that the employer trusted claimant to provide a safe environment to the young children in her care. By leaving the toddler behind inside the parked bus in unregulated winter-time temperatures for nearly three hours, claimant subjected the child to neglect and breached the employer's trust. The record shows that the employment relationship could not be salvaged. In their own investigation, the employer determined that the incident was a "situation of neglect." Audio Record at 17:08. Further, at hearing, the employer's witness testified that "when someone is found to cause a situation of neglect, we do not really have any choice but to let them go . . . it goes on our record, it hurts the reputation of the facility, there could be fines, licensing issues. It's a major incident that we do not really have any choice but to term the employment." Audio Record at 17:03 to 17:27. The record therefore shows that claimant's neglectful treatment of the child created a breach of trust in the employment relationship that could not be repaired.

Finally, claimant's conduct made a continued employment relationship impossible because it resulted in the suspension of claimant's clearance by DELC and resulting inability to work "in any childcare situations." Audio Record at 14:44. As claimant's work for the employer was centered on providing care to young children, claimant's conduct resulting in her suspension interfered with an essential aspect of the employment relationship and made a continuing relationship impossible. Because claimant's wantonly negligent violation was an irreparable breach of trust and made a continued employment relationship impossible, it exceeded mere poor judgment.

For these reasons, the employer discharged claimant for misconduct. Claimant is disqualified from receiving benefits effective January 26, 2025.

**DECISION:** Order No. 25-UI-301332 is affirmed.

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

**DATE of Service:** October 2, 2025

**NOTE:** The Department may defer recovery or completely waive an overpayment if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments>. The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online:** Log in to your Frances Online account and use “Send a Message”
- **Use the Contact Us form online at:** [unemployment.oregon.gov/contact](https://unemployment.oregon.gov/contact)
- **Email:** [UIOverpayments@employ.oregon.gov](mailto:UIOverpayments@employ.oregon.gov) – Subject: “Waiver Request”
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **U.S. Mail:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

**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

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 دستورالعمل 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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Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.