

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0519

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 10, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause, and therefore was disqualified from receiving unemployment insurance benefits effective April 13, 2025 (decision # L0011256442).¹ Claimant filed a timely request for hearing. On August 6, 2025, ALJ Murray conducted a hearing at which the employer failed to appear, and on August 12, 2025, issued Order No. 25-UI-300384, modifying decision # L0011256442 by concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving benefits effective April 20, 2025. On August 26, 2025, claimant filed an application for review of Order No. 25-UI-300384 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Geras, LLC employed claimant as a caregiver from late February 2025 through approximately April 14, 2025.

(2) Part of claimant's work agreement with the employer was that if he was arrested, he was required to notify them of such.

(3) On April 3, 2025, claimant worked his final shift for the employer. On the same day, claimant was arrested in connection with an incident which was not related to work and which had occurred before claimant started working for the employer.

(4) Shortly after claimant's arrest, claimant's mother called the employer to notify them of claimant's absence. The employer did not take her call, so she left a voicemail stating she wanted to notify them claimant would be absent from work. On April 8, 2025, claimant's mother again attempted to speak with

¹ Decision # L0011256442 stated that claimant was denied benefits from April 13, 2025 to April 25, 2026. However, decision # L0011256442 should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 13, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

the employer to notify them that claimant had been arrested. She left this information in a voicemail, as the employer did not take her call.

(5) On April 24, 2025, claimant was released from jail. Part of claimant's bail agreement stipulated that he was not permitted to work with vulnerable persons. Claimant was willing to continue working for the employer in a different capacity, such as in a janitorial role, that did not require him to work with vulnerable persons. After his release, claimant attempted to contact the employer about returning to work, but the employer did not take claimant's call or otherwise contact him. Claimant never heard from the employer again.

CONCLUSIONS AND REASONS: Claimant was discharged, but not 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).

Decision # L0011256442 concluded that claimant voluntarily quit work, seemingly based on information provided to the Department by the employer. Nevertheless, the record does not contain evidence to show that claimant quit.

At hearing, claimant testified that he would have been willing to continue working for the employer in a role, such as janitorial, that complied with the conditions of his bail agreement. Audio Record at 7:52. While he was in jail, claimant's mother contacted the employer and notified them that claimant was in jail and would therefore be absent from work. Upon his release from jail, claimant tried to contact the employer himself, but was unable to reach them. These attempts support claimant's assertion that he was willing to continue working for the employer.

The employer did not contact claimant after his arrest or at any other point afterwards, and therefore never told claimant that he had been discharged. Neither did the employer appear for the hearing or offer any evidence into the record. Thus, the record does not contain a statement from the employer that they were unwilling to allow claimant to continue working for them. However, their refusal to take claimant's calls or otherwise speak to him again, coupled with the nature of the work (caregiving) and claimant's restriction on working with vulnerable persons, shows that more likely than not, the employer was *not* willing to allow claimant to continue working. Therefore, the preponderance of evidence shows that the employer discharged claimant at some point in April 2025 after he was arrested. As such, the work separation is considered to be a discharge.

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 prove misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant in April 2025 after he was arrested. The record does not show why claimant was arrested; claimant declined to testify regarding the charges against him on the advice of his attorney.² Because the employer neither contacted claimant about his work separation nor offered any evidence into the record, the record does not show why they discharged him. Nevertheless, the order under review concluded that claimant was discharged for misconduct, relying on speculation that is not supported by substantial evidence. Order No. 25-UI-300384 at 4. For instance, the order under review stated, “Employers also have a reasonable right to expect that employees maintain consistent attendance to the greatest extent possible. Claimant understood this as a function of his employment.” Order No. 25-UI-300384 at 4. Regardless of whether employers have such a right, however, the record lacks any evidence to show that the employer in this matter *did* hold such expectations, and no testimony was taken to show that claimant knew of or understood such an expectation.

Without evidence to show that claimant knew or had reason to know that he was engaging in conduct which would probably violate the employer’s standards of behavior, the record cannot support a finding of misconduct, as such knowledge is prerequisite for determining that claimant either willfully, or with wanton negligence, violated the employer’s expectations. The only expectation of the employer’s that is actually contained in the record is that which required claimant to notify the employer if he was arrested. The record shows that he did so, or at least attempted to do so, by way of his mother. Thus, the record does not show that claimant violated any of the employer’s expectations, let alone that he did so willfully or with wanton negligence.

Further, even if the record showed that claimant’s absence due to incarceration violated the employer’s expectations, and that this violation was the reason for discharge, the employer has not met their burden to show claimant committed this violation willfully or with wanton negligence. The order under review stated, in pertinent part:

Claimant’s attorney instructed him not to discuss the nature of his arrest or incarceration, or any associated charges. While this is claimant’s right, no evidence exists in the record to establish that claimant did not willfully create the situation leading to his arrest and incarceration. Based on the fact of claimant’s arrest and incarceration, it can be inferred that law enforcement had probable cause.

Order No. 25-UI-300384 at 4. The facts of claimant’s arrest and incarceration are, at best, sufficient to support an inference that claimant was suspected of having committed a crime, and that he was charged with one. They are not sufficient to support an inference that law enforcement had probable cause to arrest him. Although probable cause is a legal requirement, its existence prior to any given arrest or incarceration is far from a factual guarantee. Furthermore, even if law enforcement *did* have probable cause to arrest claimant, probable cause is not proof of guilt. The record does not show what claimant

² Audio Record at 11:43.

was arrested for or charged with, or that claimant has been convicted of anything, and neither did claimant confess to the commission of any such crime. Additionally, the record *does* show that the incident which led to claimant's arrest was not related to his work for the employer, and occurred before he began working for them. Even if claimant was guilty of the charges filed against him, whatever they were, he could not reasonably have known at the time he committed the acts in question that they would lead to a violation of the standards of behavior held by an employer with whom he had yet to establish an employment relationship.

The order under review acknowledged that the employer bears the burden of proof in a discharge case. Order No. 25-UI-300384 at 4. Nevertheless, the conclusion that claimant was discharged for misconduct appears to rely on *claimant* having failed to show that the employer discharged him for reasons that did not constitute misconduct. This is error. As explained above, because the employer neither furnished evidence for the hearing nor provided claimant with any explanation for the end of his employment, the record does not show why claimant was discharged, whether it was due to his violation of their expectations, what those expectations were, or whether he knew or had reason to know that his conduct would probably violate those expectations. Therefore, the *employer* has not met their burden to show that claimant was discharged for a willful or wantonly negligent violation of the employer's standards of behavior.

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-300384 is set aside, as outlined above.

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

DATE of Service: October 1, 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.

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