

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0522**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 17, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, and disqualified from receiving benefits effective June 8, 2025 (decision # L0011831101).<sup>1</sup> Claimant filed a timely request for hearing. On August 26, 2025, ALJ Murray conducted a hearing, and on August 29, 2025 issued Order No. 25-UI-301951, reversing decision # L0011831101 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On September 3, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Bandon School District No. 54 employed claimant as a night custodian from September 17, 2020 through June 9, 2025.

(2) The employer maintained policies stating that “employees shall adhere to the daily schedules and shall make no commitments that will preclude their being present from their assigned responsibilities,” that “when an employee will be absent from work, they shall give notice to the principal or person designated by the superintendent to receive such notice,” and that “It is expected of the employees will be [*sic*] on duty during their work days unless the situation beyond their control prevents their presence.” Transcript at 7–8. The employer discussed these policies with their employees at the beginning of each school year.

(3) In late April 2025, the employer received a report from a community member, alleging that they had observed claimant leaving work prior to the end of his shift. Based on this report, the employer investigated the matter by reviewing surveillance camera footage from the interior and exterior of the school. Based on what they saw in the surveillance footage, the employer determined that claimant left

<sup>1</sup> Decision # L0011831101 stated that claimant was denied benefits from June 8, 2025 to June 6, 2026. However, decision # L0011831101 should have stated that claimant was disqualified from receiving benefits beginning June 8, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

his shift early without notice or permission, or without indicating as such on his timecards, on multiple dates between February 5, 2025 and April 2, 2025. When the employer subsequently interviewed claimant about his allegedly having left work early on those occasions, he denied that he had done so.

(4) On June 6, 2025, claimant worked his final shift for the employer.

(5) On June 9, 2025, after having investigated the matter and completed the various steps required by due process and claimant's union's collective bargaining agreement, the employer discharged claimant based on their belief that he had left his shift early without notice or permission, or without indicating as such on his timecards, on multiple dates between February 5, 2025 and April 2, 2025.

**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 based on their belief that he had left his shift early without notice or permission, or without indicating as such on his timecards, on multiple dates between February 5, 2025 and April 2, 2025. Claimant disputed this allegation when the employer told him about it, and maintained the same in his testimony. At hearing, claimant testified that he did not leave his shift early on April 2, 2025 or any of the dates on which the employer alleged he had done so. Transcript at 15–16. Claimant likewise testified that he stayed until the scheduled end of his shift for all the dates at issue, and that if he was not working in his regularly-assigned building he "was at someone else's [building] or somewhere on the campus still finishing [his] rounds because [he] always did check the perimeter of the building." Transcript at 19. Claimant also testified that the employer's superintendent showed him the videos which purported to portray him leaving work early, and he did not see himself leave prior to the end of his shift on those videos. Transcript at 20.

By contrast, the employer's witness, the superintendent, testified that while claimant had told her that "he walked around the building" during the end of his shift, "the video did not show him ever walking around the building," which was "one of the ways [they] could tell that he left early[.]" Transcript at 10–11. The superintendent likewise testified that "[w]hen [the employer] started to look at the cameras to see that he actually was leaving early... [they could] see [claimant] driving away on the video in his car." Transcript at 11. The employer did not submit copies of the surveillance videos in question, still photographs from those videos, or any other corroborating evidence to support their assertion that claimant had left early on the dates in question.

In weighing the conflicting testimony above, the evidence is, at best, equally balanced regarding whether claimant left early on the dates in question. As the employer bears the burden of proof in a discharge case, they have not met their burden to show that claimant acted as they alleged. Therefore, the record does not show, by a preponderance of the evidence, that claimant violated the employer's policies by leaving early without permission or notice on the dates in question. The employer therefore failed to show that claimant was discharged for misconduct, and claimant is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 25-UI-301951 is affirmed.

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

**DATE of Service:** October 3, 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

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.

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