EO: Intrastate
BYE: 25-Apr-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

109
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0529

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 24, 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 March 16, 2025 (decision # L0011573088).[1] Claimant filed a timely request for hearing. On August 20, 2025, ALJ Gutman conducted a hearing, and on August 25, 2025 issued Order No. 25-UI-301434, affirming decision # L0011573088. On September 6, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Plaid Pantries, Inc. employed claimant as an assistant manager at one of their convenience stores from November 28, 2023 until March 17, 2025. Claimant worked a 9:00 p.m. to 7:00 a.m. shift for the employer.

(2) The employer maintained a written "Think Safe" policy, which required employees to de-escalate confrontational situations with customers and refrain from confronting suspected shoplifters. Exhibit 1 at 13. The employer also prohibited fighting at their stores. Exhibit 1 at 12. These policies were contained in the employer's employee manual, which claimant received upon hire. However, during claimant's employment, it was a common practice at his store for employees "to say, no, you stole something" to a suspected shoplifter and to tell that person that they were not welcome to return. Transcript at 26.

(3) On February 19, 2024, claimant was working. Two individuals came to the store and stole something. Claimant "said something about not coming back to the store," and the two individuals left. Transcript at 13.

[1] Decision # L0011573088 stated that claimant was denied benefits from March 16, 2025 to April 25, 2026. However, decision # L0011573088 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 16, 2025 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(4) A short time later that evening, the two individuals returned with a third person, and the three attacked claimant. The assailants beat claimant severely, bloodying his face. The assailants then exited the store. Claimant was shocked and confused with blood in his eyes, limiting his vision. Claimant could not lock the store's door because he could not see, and instead of a simple turn lock, the employer required the door to be locked by wrapping a chain around the door handle with a pad lock. Claimant found himself in a "state of mind" in which he would "do anything [he could] to protect [him]self[.]" Transcript at 29. Claimant exited the store, not intending to follow the assailants out but "just trying to keep them away[.]" Transcript at 30. Outside the store, claimant encountered the assailants again and the fight resumed. Ultimately, claimant sustained a broken nose, broken ribs, lacerations to his face, and was hospitalized for 24 hours. Claimant spent seven weeks at home recovering from the injuries.

(5) Following the February 19, 2024 incident, the employer did not give claimant a disciplinary write-up, and claimant's manager signed an incident report indicating that claimant had acted in self-defense. However, as a response to the incident, the employer re-trained claimant on the "Think Safe" policy.

(6) On March 13, 2025, as claimant's shift was beginning, he was training a new employee on shift-change procedures. One customer remained in the store at the time, by a soda fountain machine. The shift-change procedure required the store to be closed and the door locked for 10 minutes while the shift-change tasks were completed. Claimant stood in front of the doorway preparing to lock the door with the chain. Claimant observed the customer pour himself a soda, drink it, and throw the cup away. The customer saw claimant looking at him and said to claimant, in reference to the soda, "oh, I changed my mind." Transcript at 22. The customer began to exit the store.

(7) Claimant viewed what the customer did as stealing. Claimant told the customer that he had stolen the soda and that he was not welcome to return to the store. The customer then stopped in the doorway, facing claimant. Claimant asked him why he stopped and the customer stated, "because you're calling me a thief." Transcript at 22. Claimant responded, "you are a thief. You sat there and stole [the] soda." Transcript at 22. The customer then threatened to mace claimant and lunged toward him as though to punch claimant. Claimant backpedaled and punched the customer, giving him "a self-defensive jab." Transcript at 22. The customer continued moving toward claimant. In response, claimant took a step backward and swung the chain for locking the door toward the customer, but did not hit him with it. The customer then ended the encounter and walked away.

(8) On March 14, 2025, at the conclusion of his shift at 4:00 a.m., claimant's manager arrived at the store and claimant informed him of the incident that occurred at the previous shift change. Claimant prepared an incident report at that time. The employer suspended claimant that day pending an investigation. The employer's area manager texted claimant informing him of the suspension and his intent to meet with claimant on Monday March 17, 2025 to discuss the matter, but without specifying which store at which to meet.[2]

(9) Over the weekend, the employer determined that the March 13, 2025 incident warranted discharging claimant. On March 17, 2025, the area manager texted claimant to tell him that the employer tried meeting that day, and inquired whether claimant was still available to meet. Claimant replied that if the

[2] Claimant worked at one of the employer's stores but lived by and received his paychecks from a different one of the employer's stores. Transcript at 28.

employer's intent was to discharge him, to just inform him of that by text message. On March 17, 2025, the employer discharged claimant for the March 13, 2025 incident, and informed claimant of the discharge by text message.

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).

The order under review concluded that the employer discharged claimant for misconduct. Order No. 25-UI-301434 at 4. The record does not support that conclusion.

The employer discharged claimant for violation of their "Think Safe" policy based on his conduct on March 13, 2025. The employer met their burden to prove that, on that date, claimant violated the "Think Safe" policy with wanton negligence. The policy called for claimant to de-escalate confrontational situations with customers and refrain from confronting suspected shoplifters. Claimant understood these policies, though he testified that during his employment it was a common practice to tell a suspected shoplifter that they were not welcome to return. Transcript at 26. On March 13, 2025, claimant interpreted the customer's actions relating to the fountain soda as theft, told the customer that he had stolen the soda and was not welcome to return, and then prolonged the confrontation by telling the customer, "you are a thief." Transcript at 22. From there, the situation escalated further, with claimant meeting the customer's threat of using mace and aggressive lunge forward with a "self-defensive jab." Transcript at 22. Then, after the customer continued moving forward, claimant swung the chain in the customer's direction, but did not hit him.

Claimant knew or should have known that his comments that initiated the encounter relating to the customer stealing and calling him a thief would escalate the situation, particularly given claimant's positioning at the exit door, and therefore violate the expectation that claimant de-escalate and refrain from confronting suspected shoplifters. Claimant testified that during his employment it was "not uncommon to say, no, you stole something" to a suspected shoplifter and to tell that person that they were not welcome to return. Transcript at 26. However, following attack on him on February 19, 2024, claimant was re-trained on the "Think Safe" policy and so, as of March 13, 2025, claimant knew or should have known that his initial comments to the customer on March 13, 2025 breached the employer's policy. As claimant made the comments consciously and with indifference to the consequences of his actions, the comments initiating the confrontation on March 13, 2025 were a wantonly negligent violation of the employer's expectations.

With respect to claimant's conduct that evening delivering a "self-defensive jab" and swinging the chain in response to the customer moving forward, these acts also had the effect of escalating the confrontation and constituted fighting on store premises, which the employer prohibited. However, it cannot be concluded that these aspects of the encounter were wantonly negligent violations of the employer's expectations. This is so because claimant asserted at hearing that the jab and swinging of the chain were done in self-defense, assertions that are plausible given that the customer had lunged toward claimant and threatened to use a weapon by macing claimant. As the employer did not disprove that the jab and swinging of the chain were self-defensive acts, they did not establish that claimant acted with indifference to the consequences of his actions by engaging in those acts, and those aspects of claimant's conduct were not proven to be wantonly negligent violations.

The record therefore shows that claimant violated the employer's expectations on March 13, 2025 with wanton negligence. However, that violation was an isolated instance of poor judgment. 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).

Applying OAR 471-030-0038(1)(d)(A), claimant's March 13, 2025 wantonly negligent violation was isolated. Although claimant was involved in an escalated confrontation when the assailants attacked him on February 19, 2024, claimant's conduct on that date was not a willful or wantonly negligent violation of the employer's expectations. The February 19, 2024 incident began when claimant told the customers he suspected of shoplifting not to return to the store. Though claimant's comment would appear to violate the aspect of the "Think Safe" policy that bars confronting suspected shoplifters, claimant testified that the common practice at the time was to state "no, you stole something" to a suspected shoplifter and to tell that person that they were not welcome to return. Transcript at 26. That claimant

believed in good faith that making such comments was permissible at the time of the February 19, 2024 incident is credible as it was only after that incident that claimant was re-trained on the "Think Safe" policy. Therefore, the employer did not prove that claimant's conduct on February 19, 2024 of telling the suspected shoplifters not to return to the store was a willful or wantonly negligent violation of the employer's expectations.

Nor was claimant's conduct during the remainder of the encounter with the assailants a willful or wantonly negligent violation of the employer's expectations. The record shows that the suspected shoplifters returned to the store with a third person and that the three assailants proceeded to attack and beat claimant severely. The assailants exited the store, leaving claimant shocked and confused with blood in his eyes. Having just been attacked, with his vision limited, and the way to lock the door being the process of using a chain and padlock, it was reasonable for claimant to exit the store. Claimant credibly testified that he did not follow the assailants out of the store, "was just trying to keep them away" and "[w]hen you're in that state of mind, you do anything you can to protect yourself." Transcript at 29-30. Thus, although claimant encountered the assailants again once outside the store and the fight resumed, the record fails to show that claimant's involvement in the fight was anything more than self-defensive in nature or that he acted with the required willful or wantonly negligent mental state, given the shock and confusion he was experiencing at the time.

That claimant's conduct on February 19, 2024 did not amount to a willful or wantonly negligent violation of the employer's expectations is bolstered by the fact that the employer did not give claimant a disciplinary write-up for the incident and claimant's manager signed an incident report indicating that claimant had acted in self-defense. Further, even if claimant's conduct during the February 19, 2024 incident was a willful or wantonly negligent violation of the employer's expectations, it occurred about 13 months before the final incident in this matter, and thus too remote in time to be considered alongside the final incident as a repeated act or pattern of willful or wantonly negligent behavior.

Furthermore, as to OAR 471-030-0038(1)(d)(D), claimant's conduct on March 13, 2025 did not exceed mere poor judgment. Claimant's comments that initiated the encounter relating to the customer stealing and calling him a thief did not violate the law, nor were they tantamount to unlawful conduct. Similarly, claimant's conduct of punching the customer and swinging the chain were self-defensive in nature and so did not violate the law. Nor does the record show that claimant's conduct created an irreparable breach of trust in the employment relationship or make a continued employment relationship impossible, as the record fails to show that claimant's conduct interfered with an essential aspect of the employment relationship or threatened the ability of the relationship to continue.

Thus, claimant's wantonly negligent violation on March 13, 2025 was an isolated instance of poor judgment and, therefore, not misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-301434 is set aside, as outlined above.

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

DATE of Service: <u>October 6, 2025</u>

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.

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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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