EO: Intrastate
BYE: 18-Apr-2026

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

303
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0534

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 2, 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 April 13, 2025 (decision # L0010971635).[1] Claimant filed a timely request for hearing. On August 22, 2025, ALJ Nyberg conducted a hearing, and on August 29, 2025 issued Order No. 25-UI-301969, reversing decision # L0010971635 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On September 11, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Pathway Enterprises, Inc. employed claimant as a direct support professional (DSP) from November 2022 through April 16, 2025. Claimant worked at the employer's residential facility, supporting adults with mental disabilities, and reported to the program manager of the facility.

(2) On November 2, 2022, claimant signed for receipt of the employer's employee handbook. Exhibit 3 at 5. The handbook contained policies placing restrictions on employees' use of their own phones for personal purposes while working; required employees to refrain from insubordination, defined as "refusal to carry out reasonable directions of supervisors, gross disrespect, and other related actions"; and required employees to refrain from "[e]ndangering the health and welfare of supported individuals [i.e., residents in the employer's care], employees, or company guests[.]" Exhibit 3 at 6, 8, 10.

[1] Decision # L0010971635 stated that claimant was denied benefits from April 13, 2025 to April 18, 2026. However, decision # L0010971635 should have stated that claimant was disqualified from receiving benefits beginning April 13, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) Early in claimant's tenure with the employer, claimant was "talked to" because the employer felt she had been using her cell phone during work too much. Transcript at 27. After that, claimant changed her phone-use habits, which she believed comported with the employer's expectations.

(4) In March 2025, a new program manager began working at claimant's facility. After the new manager started, she "shadow[ed]" each of the DSP's, including claimant, at the facility so that she could "see all the different techniques and how they worked for the client and all that." Transcript at 43.

(5) On April 4, 2025, the employer issued claimant a written warning pertaining to several areas of concern. One involved an incident on March 19, 2025, in which claimant had been "sitting on the couch in the common room with [her] feet propped up and [her] eyes closed" during what she claimed was her break period. Exhibit 2 at 8. After her break period ended, claimant "continued to play on [her] phone and take calls for the next hour," including while she and the manager discussed various tasks that needed to be completed that day. Exhibit 2 at 9. Afterwards, claimant's manager told her that she should not be playing games on her phone while supporting the residents, and that she should "do so elsewhere" if she needed to take a phone call, to which claimant responded, "okay." Exhibit 2 at 9.

(6) Another concern addressed in the written warning involved an incident in March or April 2025 in which the new manager, shadowing claimant while the latter was attempting to help a resident who was having difficulty, suggested that claimant take a different approach with the resident. Claimant declined the manager's suggestion in favor of continuing her approach. Exhibit 2 at 9. Additionally, the written warning indicated that other employees had "expressed ongoing frustrations with [claimant's] lack of support and follow through with completing assigned shift duties, and having to fill in the gaps when [claimant was] often tardy to shift or calling out." Exhibit 2 at 9. The warning characterized "the above-mentioned actions towards management" as "absolutely unacceptable and… considered insubordination." Exhibit 2 at 9.

(7) On the morning of April 11, 2025, claimant and another DSP, "S," were on shift at the facility, along with the manager. At some point in the late morning, S left to buy groceries for the residents. At 11:40 a.m., the manager asked claimant, "Are you making lunch [for the residents]?" Exhibit 2 at 7. Claimant "replied that it was 'too early' to begin making lunch." Exhibit 2 at 7. Afterwards, claimant's phone "beeped," and claimant told the manager that she was "going to clean and would not be able to hear the floor because she would be listening to music." Exhibit 2 at 7. Claimant then went to clean the bathrooms. At 12:30 p.m., S returned with the groceries. At 12:50 p.m., S made lunch for the residents. In an April 14, 2025 email to the employer's program director, the manager characterized claimant's actions on April 11, 2025 as a "lack of teamwork." Exhibit 2 at 7.

(8) On April 16, 2025, the employer discharged claimant due to what they characterized in the termination letter as "reports of unsupportive behavior toward team members, failure to follow reasonable management directives, ongoing inappropriate phone use, and extended absences from the work site with minimal communication." Exhibit 2 at 6.

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 because they felt she had engaged in "unsupportive behavior toward team members, failure to follow reasonable management directives, ongoing inappropriate phone use, and extended absences from the work site with minimal communication" after the written warning was issued on April 4, 2025. As a preliminary matter, the order under review concluded that the March 19, 2025 incident, in which claimant was "sitting down playing with her phone for half an hour with her feet up," was the proximate cause of the discharge. Order No. 25-UI-301969. The record does not support this conclusion.

Instead, the record shows that, following the issuance of the April 4, 2025 written warning, the employer took issue with claimant's conduct on April 11, 2025, when she declined to help prepare lunch in favor of cleaning the bathroom, and that this was the proximate cause of the discharge. First, the employer did not allege that any additional concerns over claimant's conduct arose after the April 11, 2025 incident. Thus, this incident was the last to occur prior to claimant's discharge. *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). Additionally, while the employer disciplined claimant for the various concerns outlined in the April 4, 2025 written warning, they did not discharge her at the time the warning was issued. Furthermore, at hearing, the employer's human resources director explicitly testified that the "final incident" which led the employer to discharge claimant was the April 11, 2025 incident. Transcript at 6. Thus, regardless of the employer's various other concerns regarding claimant's conduct, the April 11, 2025 incident was the proximate cause of their decision to discharge her, and is the proper focus of the misconduct analysis.

The employer has not met their burden to show that claimant's conduct on April 11, 2025 was a willful or wantonly negligent violation of their standards of behavior. At hearing, claimant's manager testified, regarding the incident, that claimant had been insubordinate in that incident because she had "asked [claimant] to make lunch… and she told [the manager] she was going to clean." Transcript at 14–15. This testimony differs from the manager's statement in the April 14, 2025 email she wrote to the program director regarding the same incident. In that email, the manager stated, in relevant part, "At 11:40am or so, I asked [claimant] "Are you making lunch?["], and that claimant replied that it was "too early" to do so. Exhibit 2 at 7. Given that this email was written three days after the incident, whereas the manager's testimony came more than four months later, the manager's account in the email is more contemporaneous to the incident and therefore more likely accurate.

The manager's concern with claimant's response to her inquiry suggests that the manager believed that, by asking claimant if she was making lunch, the manager had *directed* claimant to make lunch. The record suggests, however, that claimant did not understand the manager's question as a directive. In context, this is the most logical reading of the interaction. Claimant had worked for the employer since at least November 2022, while the manager had just started working for the employer in the month prior to this interaction. During the brief time in which claimant and the manager worked together, the manager had taken to "shadowing" claimant and other DSP's so that she could "see all the different techniques and how they worked for the client and all that." In other words, the manager was, at the time of this interaction, apparently still learning the various operational procedures of the facility.

The record does not show the time at which the facility's residents were typically served lunch, and the employer's policies do not specify times or procedures for preparing the residents' meals. *See* Exhibit 3 at 6–11. Thus, when the manager asked claimant at or around 11:40 a.m. if she was "making lunch," and claimant replied that it was "too early," it is reasonable to conclude that claimant was directly answering a facially-neutral question with a statement of fact, and that it *was*, more likely than not, too early to begin preparing lunch based on the residents' typical schedule. That claimant did not infer from the manager's question that the manager wished claimant to begin preparing lunch at that point does not show that claimant "refused to carry out reasonable directions of" her supervisor. As such, under the employer's policy, claimant's conduct did not meet the definition of insubordination. Despite this, claimant may well have violated the employer's expectations that she comply with the manager's instructions that were seemingly implied in the question she asked claimant. Even if she did so, however, claimant did not violate this expectation willfully or with wanton negligence because claimant neither knew nor had reason to know what the expectation was, as the manager failed to make her meaning clear.

Other than the insubordination provision, above, the only of the employer's policies in the record that potentially applies to the April 11, 2025 incident is that which forbids "[e]ndangering the health and welfare of supported individuals, employees, or company guests." The employer did not allege, and the record does not otherwise show, that the residents were in any way harmed or in danger of harm by being fed lunch at 12:50 p.m. Thus, the employer has not met their burden to show that claimant violated this policy, let alone willfully or with wanton negligence, by not beginning to prepare lunch at 11:40 a.m. in response to the manager's inquiry.

For the above reasons, the employer did not show, by a preponderance of the evidence, that claimant's conduct on April 11, 2025 constituted a willful or wantonly negligent violation of their expectations. The employer therefore failed to establish that claimant was discharged for misconduct. Claimant is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-301969 is affirmed.

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

DATE of Service: <u>October 10, 2025</u>

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
Email: *appealsboard@employ.oregon.gov*
Website: *www.Oregon.gov/employ/pages/employment-appeals-board.aspx*