

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0543

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 18, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0009331135). The employer filed a timely request for hearing. On August 25, 2025, ALJ Hall conducted a hearing at which claimant failed to appear, and on September 2, 2025, issued Order No. 25-UI-302097, affirming decision # L0009331135. On September 17, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer included a brief written statement, regarding the merits of this matter, with their application for review. To the extent that the employer intended this statement to be considered as a written argument, the employer did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Primeflight Aviation Services, Inc. employed claimant as a scanning lead from June 3, 2024 through December 20, 2024.

(2) The employer's attendance policy required employees to give at least four hours notice, when possible, if they were going to be absent. The policy also provided that when an employee misses three or more consecutive shifts, the employer would send them a "Quit Notice." Exhibit 1 at 6. The employee was then required to respond to the notice within two days, return to work, or provide documentation (such as a doctor's note) to explain the absence, or else the employer would consider them to have abandoned their job.

(3) On December 13, 14, 15, 16, and 17, 2024, claimant called out of work pursuant to the employer's attendance policy, indicating for each absence that she was sick. On December 18, 2024, the employer sent claimant a quit notice via email, indicating that she was required to respond within two days or else she would be discharged for presumed job abandonment.

(4) On December 20, 2024, the employer discharged claimant because she had not responded to the employer's quit notice at that point.

(5) On December 26, 2024, claimant responded to the employer's quit notice. In relevant part, she stated, "I did not abandon my job. I was extremely sick and got a doctor's note." Exhibit 1 at 4.

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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, acts that violate the law, that are tantamount to unlawful conduct, or 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)(D).

The employer discharged claimant because she failed to respond to their quit notice within the timeframe they expected. As a preliminary matter, the order under review concluded that the employer discharged claimant because she had accumulated too many points under the employer's attendance policy. Order No. 25-UI-302097 at 2. The record does not support this conclusion. The employer's documentary evidence included a copy of a document dated December 20, 2024 and entitled, "Change in Relationship (Notice to Employee)" which stated, in relevant part, "EE was sent a quit notice 12/18 for having missed 5 scheduled shifts. EE did not respond or return to work. Term initiated 12/20[.]" Exhibit 1 at 2. Additionally, at hearing, the employer's witness testified that claimant was discharged for "job abandonment" after explaining that their policy required a response to the quit notice to avoid discharging an employee for job abandonment. Audio Record at 12:55 to 13:42. Therefore, claimant's

failure to respond to the quit notice within the timeframe that the employer expected was the proximate cause of the employer's decision to discharge her, and is the proper focus of the analysis.¹

The employer did not meet their burden to show that claimant's failure to respond to the quit notice within their expected timeframe was misconduct. First, the record does not show at what time on December 18, 2024 the notice was sent, or at what time on December 20, 2024 the employer discharged claimant. In other words, it is not clear whether claimant actually failed to respond to the employer's notice within two days, or if the employer concluded, prior to the expiration of the two-day period, that claimant would not be responding timely and then discharged her on that basis.

Even assuming that the employer did wait the full two days before discharging claimant, however, they did not meet their burden to show that claimant's failure to respond in that timeframe was a willful or wantonly negligent violation of their expectations. When claimant eventually did respond to the notice on December 26, 2024, she stated, "I was extremely sick and got a doctor's note." From this statement, as well as the fact that claimant had managed to call out pursuant to the employer's policy for the five days preceding the notice, it can be inferred that she was, more likely than not, too ill to check her email or respond to the notice by the deadline. To the extent that this was the case, claimant's inability to respond due to illness does not show that she either intentionally, or without regard to the consequences of her actions, failed to respond to the notice within the employer's timeframe. Thus, claimant's failure to respond to the notice within the employer's timeframe was most likely not a willful or wantonly negligent violation of the employer's expectations.

Furthermore, even if claimant received the notice and was capable of timely responding to it, such that her failure to timely respond constituted misconduct, her failure to respond within the required two-day time period would have been, on this record, an isolated instance of poor judgment. The record does not show that claimant had previously violated any of the employer's expectations willfully or with wanton negligence.² As such, the conduct was isolated. Additionally, the conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Therefore, even if claimant's failure to respond to the quit notice within two days was a willful or wantonly negligent violation of the employer's expectations, it was, at worst, an isolated instance of poor judgment, which is not misconduct.

¹ 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).

² The employer's documentary evidence includes what appears to be a report from the employer's timekeeping system, regarding claimant's time entry for December 13, 2024 through December 20, 2024. See Exhibit 1 at 5. The line items for each of the five absences from December 13 through 17, 2024, included entries which state, "SICK 1 PT 8:30." Exhibit 1 at 5. By contrast, the entries for December 18 and 20, 2024 state, "NO CALL NO SHOW 3 PTS 8:30". Exhibit 1 at 5. Neither this document, nor the significance of the entries regarding December 18 and 20, 2024, were explained at hearing. Likewise, the "Change in Relationship" form indicated that claimant was absent for five shifts, not six or seven, despite being dated December 20, 2024. Exhibit 1 at 2. This evidence, without further explanation, is insufficient to prove that claimant was actually absent from scheduled shifts on December 18 and 20, 2024, or that she violated the attendance policy in relation to either of those dates. As such, the record does not show by a preponderance of the evidence that these occurrences were willful or wantonly negligent violations that would contribute to a pattern of such 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-302097 is affirmed.

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

DATE of Service: October 15, 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.

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 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

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