

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0547

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 26, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0009898037). The employer filed a timely request for hearing. On August 28, 2025, ALJ Hall conducted a hearing, and on September 5, 2025 issued Order No. 25-UI-302567, affirming decision # L0009898037. On September 22, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Global Parking Systems, LLC employed claimant as a ground transportation monitor from January 30, 2024 through February 26, 2025.

(2) The employer had an attendance policy which provided, in relevant part, that any absences not covered by accrued leave were considered unexcused. Unexcused absences subjected an employee to progressive discipline, including a series of warnings, suspension, and discharge. Claimant understood this policy.

(3) Claimant received warnings under the employer's attendance policy on May 2, June 19, and September 3, 2024. Claimant received a "final" warning and suspension from work under the policy on September 29, 2024. Exhibit 1 at 7.

(4) Claimant was absent from work on January 26, 2025, and February 12, 15, 17, and 18, 2025. Claimant did not have accrued leave to cover any of the absences. On February 18, 2025, claimant gave the employer timely notice that he would be absent from work. That day, his cat showed signs of serious illness and claimant believed that he needed to stay home from work to give it medication and monitor its health. Claimant could not afford professional diagnosis or treatment for the cat.

(5) On February 26, 2025, the employer discharged claimant under their progressive discipline policy for his unexcused absences occurring from January 26 through February 18, 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 due to his absences from work on January 26, 2025, and February 12, 15, 17, and 18, 2025. The initial focus of the misconduct analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009. The last occurrence of an attendance policy violation is considered the reason for the discharge. *See generally* June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division. Therefore, the focus of the analysis is on claimant’s final absence, which occurred on February 18, 2025.

The employer’s attendance policy provided that any absences not covered by accrued leave were considered unexcused, and subjected the employee to progressive discipline. Claimant understood this policy. The policy was reasonable to the extent it set forth a general expectation of regular attendance at work. However, to the extent the policy did not allow for an employee to be absent under exigent circumstances, it did not involve a standard of behavior that an employer has the right to expect of an employee. A conscious decision not to comply with an unreasonable employer policy is not misconduct. OAR 471-030-0038(1)(d)(C).

The parties agreed that claimant was absent from work on February 18, 2025 after providing the employer with timely notice that he would be absent, and that claimant did not have accrued paid leave to cover the absence. Claimant testified that he was absent that day because his cat had symptoms of serious illness, including persistent nausea, vomiting, and lethargy. Transcript at 17. Claimant further testified that he could not afford to take the cat to a veterinarian, but received advice from a telephone hotline to give it non-prescription medication, which ultimately helped it recover. Transcript at 17-18. At the time claimant decided to miss work, he was fearful that doing so would cause the employer to discharge him. Transcript at 19. The employer did not rebut claimant’s testimony.

OAR 471-030-0038 provides that a claimant’s absence due to illness, or, under certain circumstances, due to the need to care for a family member who is ill, is not misconduct. *See* OAR 471-030-0038(3)(b), (d), (e)(B). These provisions do not, by their terms, apply to the illness of a pet. However, the need to care for a pet cat’s apparently life-threatening acute illness when no alternative is available can reasonably be considered an exigent circumstance justifying an absence from work. Therefore, the employer’s attendance policy, as applied to the circumstances of claimant’s final absence on February

18, 2025, was not reasonable, and claimant's conscious decision to violate the policy by missing work was not misconduct under OAR 471-030-0038(1)(d)(C).

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-302567 is affirmed.

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

DATE of Service: October 21, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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