

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0549

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0011767691). The employer filed a timely request for hearing. On September 18, 2025, ALJ Janzen conducted a hearing, and on September 19, 2025, issued Order No. 25-UI-304412, reversing decision # L0011767691 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective May 4, 2025. On September 22, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Lovett Deconstruction, Inc. employed claimant as a crew leader from February 2022 through May 9, 2025.

(2) The employer expected their employees to wear safety glasses at all times while at a worksite. The employer also expected claimant to immediately notify the project manager of any deviations from plans for how work was to be completed. Claimant understood these expectations.

(3) In March 2025, claimant realized that he had dropped his safety glasses while at a worksite and could not locate them. Claimant knew he had additional safety glasses in his vehicle, but did not retrieve them and continued working without them. A safety manager observed this and issued claimant a written warning for failure to use safety glasses.

(4) On May 7, 2025, claimant was assigned to a worksite that had a railroad track running through the property. The workplan called for a vacuum duct to be temporarily installed for work at the site, attached to a bridge so that it would not block the track. A subcontractor performing the work involving the duct insisted to claimant that instead of attaching the duct to a bridge, which would create strain on the vacuum, they should lay a ladder across the track and attach the duct to that. The subcontractor assured claimant that the track was not in use, and claimant verified through a website that the track was

only used by a trolley that was not scheduled to operate that day. Claimant approved this change to the workplan and returned to his office without attempting to notify the project manager of it.

(5) Later on May 7, 2025, a trolley was passing through the worksite and was forced to stop suddenly due to the ladder and duct obstructing the track. The employer and the subcontractor apologized to the trolley conductor, and the ladder and duct were removed. The trolley company made a social media post with a photograph of the obstruction to call attention to the safety lapse, although the employer was not identified in the post.

(6) On May 9, 2025, the employer discharged claimant for having failed to notify the project manager of the change in duct location. Claimant had no disciplinary history other than the March 2025 warning regarding safety glasses, and the employer had otherwise been satisfied with his work.

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 for failing to immediately notify the project manager that he had authorized the subcontractor to change the duct location. The order under review concluded that this could not be excused as an isolated instance of poor judgment because, due to the March 2025 safety glasses violation, it was not a single or infrequent occurrence of wantonly negligent behavior. Order No. 25-UI-304412 at 3. The record does not support this conclusion.

The employer reasonably expected their crew leaders, such as claimant, to immediately notify the project manager of any change to workplans. Claimant understood this expectation. The parties agreed that on May 7, 2025, claimant knew the workplan for the site at which he was working called for a vacuum duct to be attached to a bridge, and at the subcontractor’s request, claimant authorized a change to the plan so that a ladder and the duct would be placed across a railroad track. The parties also agreed

that claimant did not attempt to notify the project manager of this change despite having the opportunity to do so.

Claimant did not fully explain at hearing why he failed to notify the project manager of the change, testifying, “I don’t have an answer for that. I just wasn’t thinking about it. I think I just relied way too much on the contractor. . . and their experience.” Transcript at 24-25. Claimant was not indifferent to the safety implications of the change, as demonstrated by his investigation of how and when the track was expected to be used prior to approving the change. However, had he notified the project manager of the change, claimant would likely have learned that seeking permission from the trolley company to block the track was necessary to ensure the safety of others in the trolley and at the worksite. The record shows that claimant consciously decided not to inform the project manager of the change, and it can reasonably be inferred that he was indifferent to the consequences of his inaction in that regard, knowing that it would likely result in a violation of the employer’s policy. Claimant therefore violated the employer’s expectation with wanton negligence.

Whether this violation constituted misconduct turns on whether it was an isolated instance of poor judgment. Claimant’s conduct on May 7, 2025 did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct.¹ 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. Nor did claimant’s conduct otherwise make a continued employment relationship impossible, as it was not likely to reoccur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or on-going non-compliance with a regulatory duty. Therefore, the question is whether claimant’s conduct on May 7, 2025 was isolated within the meaning of the rule.

The employer reasonably expected that their employees would wear safety glasses at all times while at a worksite. Claimant understood this expectation. The parties agreed that in March 2025, claimant violated the policy, for which he received a written warning. Claimant testified that he “had misplaced the safety glasses that [he] had” because they “fell off” and he could not locate them. Transcript at 17. Claimant “started working without them,” despite knowing he had other safety glasses in his vehicle. Transcript at 17. Because claimant acted consciously and with disregard for the consequences of his actions, knowing they would likely violate the employer’s policy, the violation resulted from wanton negligence.

These two violations, though occurring relatively close in time over the course of claimant’s more than three years of employment, do not establish a pattern of willful or wantonly negligent conduct. Claimant knew or should have known at the time of the March 2025 violation involving glasses that his actions potentially posed a threat to his own safety. In contrast, the policy claimant violated on May 7, 2025 was primarily an administrative measure to keep the project manager apprised of all aspects of the job, not only those that could impact safety. The record suggests that claimant believed the potential safety impacts of the change to the duct placement were resolved through his own research into the track’s use before approving the change, and he therefore failed to realize the potential safety implications of

¹ ORS 164.365(1)(a)(F) prohibits a person from intentionally damaging or destroying the property of another “[b]y intentionally interfering with, obstructing or adulterating in any manner the service of a . . . railroad[.]” ORS 811.475(1), which establishes “the offense of obstructing a rail crossing,” applies only “if the person is operating a vehicle.” Claimant’s actions were not tantamount to a violation of either statute.

violating the notice policy. In considering the totality of these circumstances and the differences in the violations, they can best be described as infrequent occurrences, rather than repeated acts or a pattern of willful or wantonly negligent conduct. Accordingly, claimant was discharged for an isolated instance of poor judgment, which is not misconduct.

For these 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-304412 is set aside, as outlined above.

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

DATE of Service: October 21, 2025

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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