

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0550

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 27, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective February 2, 2025 (decision # L0009543492).¹ Claimant filed a timely request for hearing. On September 2, 2025, ALJ Scott conducted a hearing and issued Order No. 25-UI-302137, affirming decision # L0009543492. On September 18, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant as a grocery clerk from April 10, 2020 through February 3, 2025.

(2) The employer expected their hourly employees to clock out and in at the start and end of their lunch breaks, and that the break should last either 30 or 60 minutes. Claimant understood this expectation.

(3) In January 2025, the employer suspected that claimant had not been clocking out and in for lunch breaks during some of his shifts. A review of timeclock records and video surveillance footage showed that claimant failed to clock out or in for lunch breaks during seven shifts from January 17 through 26, 2025, and six of those breaks lasted longer than 60 minutes. Claimant clocked in and out at the start and end of each shift without incident, and was otherwise performing his work satisfactorily during this period. Claimant had no other disciplinary history, and had previously abided by the employer's lunch break policies throughout his employment without incident.

¹ Decision # L0009543492 stated that claimant was denied benefits from February 2, 2025 to August 23, 2025. However, decision # L0009543492 should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 2, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

(4) On January 31, 2025, the employer notified claimant that they believed he had repeatedly violated their lunch break policies. Claimant submitted a handwritten response in which he took “full responsibility” for the policy violations, but did not offer to explain them except to say that his behavior was “completely out of [character].” Exhibit 1 at 4.

(5) On February 3, 2025, the employer discharged claimant for violating their lunch break policies.

CONCLUSIONS AND REASONS: Claimant was discharged 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 he failed to clock out or in for lunch breaks on seven occasions in January 2025, and the breaks lasted longer than 60 minutes on six of those occasions. The employer reasonably expected that their hourly employees would clock out and in for lunch breaks and that a lunch break would not last longer than 60 minutes. Claimant understood these policies, which were explained to him at the time he was hired.

Claimant did not dispute the employer’s allegations regarding failing to clock out or in for lunch breaks, or that the breaks lasted longer than 60 minutes. In his written admission to the allegations that claimant provided to the employer shortly before he was discharged, he offered no specific explanation for these violations. *See* Exhibit 1 at 4. At hearing, claimant testified that he was “unaware of what [he]. . . was doing” when the violations occurred, thereby suggesting that he did not *consciously* fail to clock out or in for the breaks at issue, and was not aware at the time he took them that the breaks were exceeding 60 minutes in duration. Audio Record at 22:00. Claimant testified that he was experiencing various stressors at that time that may have affected his memory or thought processes, including that he was being prosecuted for a felony; he was taking medication with memory-related side effects; and his father, who lived in a distant state, was gravely ill. Audio Record at 22:20, 23:30. However, claimant

testified that despite these circumstances he had no difficulty remembering to clock in or out at the start or end of each shift, and had no other performance problems at work. Audio Record at 23:40, 26:20.

In weighing claimant's explanation for the violations against the facts that claimant had abided by the employer's lunch break policies for nearly five years without incident; that he had no difficulty remembering to use the timeclock at the start and end of each shift; that the violations occurred repeatedly throughout a two-week period; and that claimant had no other work performance issues during that period, it is more likely than not that claimant acted consciously in failing to clock out or in for lunch breaks and in taking longer breaks than the policy allowed. Claimant's conscious conduct evinced indifference to the consequences of his actions, and to the employer's interests, and was therefore wantonly negligent. Moreover, claimant's conduct cannot be excused as an isolated instance of poor judgment, as the conduct was repeated a total of seven times over nearly two weeks and was therefore not a single or infrequent occurrence. Accordingly, the employer has shown by a preponderance of the evidence that claimant was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective February 2, 2025.

DECISION: Order No. 25-UI-302137 is affirmed.

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

DATE of Service: October 17, 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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