

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0561

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 27, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0007874463). The employer filed a timely request for hearing. On September 2, 2025, ALJ Murray conducted a hearing, and on September 3, 2025, issued Order No. 25-UI-302316, affirming decision # L0007874463. On September 23, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Mid-Willamette Family YMCA employed claimant at the welcome center of their recreational facility from June 8, 2022 through November 20, 2024.

(2) The employer expected their welcome center employees to periodically complete “rounds” of the facility according to a written schedule that involved inspecting certain areas for cleanliness and safety, and removing trash if needed. Transcript at 7. The employee performing the rounds would then initial a checklist of tasks on the schedule to signify that they had done them, or provide a written explanation as to why they could not or did not do them. Claimant generally understood these expectations.

(3) On October 5, 2023, a manager sent an email to welcome center staff, including claimant, which stated in relevant part, “It has come to my attention that some of our staff are using the cameras to check various areas of the building instead of physically going to the area for their rounds. . . This is NOT a round. . . I also have access to the cameras and am aware of who is doing this.” Exhibit 1 at 40. Thereafter, claimant understood that the employer expected him to physically go to each location on the rounds checklist, rather than inspecting them through video.

(4) On November 6, 2024, the rounds checklist called for the following three tasks to be performed at each of two gyms: “Walk Floor to Pick Up Trash [every hour];” “Check That Closets Are Locked [every three hours];” and “Check Trashcans [in one gym every hour, in the other every three hours].” Exhibit 1 at 52. Claimant initialed having completed these six items on the checklist in the 6:00 p.m. column, and

a coworker initialed having completed five of the six items in each of the 5:00, 7:00, and 8:00 p.m. columns.¹ Exhibit 1 at 52.

(5) Prior to initialing the checklist on November 6, 2024, claimant had gone to one of the gyms at around 6:00 p.m. and, because there was “a game going on,” inspected the floor for trash through the windows and doors without entering the gym. Transcript at 17-18. Claimant returned to that gym “at about 8:00 when [he and a coworker] were kicking everybody out of that gym for the evening and getting everything closed up for the night.” Transcript at 20. At that time, claimant conducted a floor inspection and removal of trash. Claimant initialed the form as he did because he understood the policy as allowing an inspection from the exterior of the gym if he arrived to find it in use, and could delay the parts of the inspection requiring entry until it was no longer in use.

(6) At some point after November 6, 2024, a member of management reviewed surveillance footage from that day and saw that claimant had not been present inside one of the gyms at or around 6:00 p.m. The manager therefore believed that claimant had been dishonest in initialing the rounds checklist to indicate that he had completed the “Walk Floor to Pick Up Trash” task for that gym.

(7) On November 20, 2024, the employer discharged claimant based on their belief that on November 6, 2024, claimant had failed to do a task on his rounds and falsely indicated on the checklist that he had completed that task.

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).

Good faith errors are not misconduct. OAR 471-030-0038(3)(b). A “good faith error” logically involves some sort of mistake made with the honest belief that one is acting rightly. *See Webster's Third New Int'l Dictionary* 978 (Unabridged ed. 2002) (defining “good faith” as “a state of mind indicating honesty and lawfulness of purpose: belief in one’s legal title or right: belief that one’s conduct is not unconscionable or that known circumstances do not require further investigation: absence of fraud, deceit, collusion, or gross negligence”).

¹ The spaces for initials for the “Check That Closets Are Locked” item as to one of the gyms were blacked out in the 5:00, 7:00, and 8:00 p.m. columns. Exhibit 1 at 52.

The employer discharged claimant because they believed that on November 6, 2024, he failed to do a task on his rounds and falsely indicated on the checklist that he had completed that task. The employer reasonably expected that claimant would complete the assigned tasks on his rounds and initial the item on the checklist only if he had completed the associated task. Claimant generally understood this expectation, but his understanding of what constituted completion of the task at issue in his discharge differed from that of the employer.

Claimant testified that he was told at the time of his discharge that it was occurring based on an audit of the rounds checklist for a single date, November 6, 2024, and involved whether he had inspected a gym at approximately 6:00 p.m. Transcript at 17. The employer's witnesses testified that they did not know the date of the alleged violation leading to claimant's discharge, with one testifying she thought it was "just a couple days before the 20th of November," and the other testifying that claimant was discharged "no more than three days" after the alleged violation was discovered. Transcript at 6, 14. In weighing this evidence, it is more likely than not that the alleged violation occurred on November 6, 2024.

The parties agreed that claimant initialed the November 6, 2024 checklist to indicate that he had completed the 6:00 p.m. task of "Walk Floor to Pick Up Trash" for each of the facility's two gyms, and that surveillance video showed that he did not enter one of the gyms at or around that time. The employer considered claimant's failure to enter the gym a violation of their expectation that he inspect the gym floor for trash. Claimant testified that he inspected the floor through the windows and doors of the gym, rather than by entering it, because it was in use by customers at 6:00 p.m., and he entered to inspect the floor and collect trash approximately two hours later when it was no longer in use. Transcript at 17-18, 20. Claimant believed that he had completed the task in accordance with the employer's expectations, as he understood them, and that he was therefore not dishonest in initialing the checklist to indicate that he had completed the task. The employer did not rebut claimant's account of his actions that evening.

The record suggests that prior to October 5, 2023, some staff believed that the employer permitted the rounds to be conducted by viewing live video feeds, rather than by going in person to the locations on the checklist. An email sent to the staff on October 5, 2023, including claimant, clarified that relying on the video feeds was prohibited and that conducting rounds required "physically going to the area[s]" on the checklist. Exhibit 1 at 40. Based on this evidence, it is more likely than not that claimant knew or should have known he had to go *to* the gym to inspect the floor for trash on November 6, 2024. However, the record does not show by a preponderance of the evidence that claimant was told he must go *inside* the gym if he was able to view the floor through windows and doors, and if entering might be disruptive to customers' use of the gym.

Therefore, the employer failed to meet their burden to show that when claimant decided not to enter the gym, he acted with indifference to the consequences of his actions and knew or should have known that his actions would probably result in a violation of the employer's expectations. Similarly, because claimant believed he had completed the rounds tasks in accordance with the employer's expectations, he did not know or have reason to know that initialing the checklist that he had completed them would be viewed by the employer as an act of dishonesty. Accordingly, claimant did not violate the employer's expectations willfully or with wanton negligence. Moreover, even if claimant had acted with wanton negligence, his conduct was, at worst, a good faith error regarding how the employer expected the task to be completed, 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-302316 is affirmed.

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

DATE of Service: October 22, 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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