

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0569

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 6, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0009124612). The employer filed a timely request for hearing. On September 9, 2025, ALJ Dorr conducted a hearing at which claimant did not appear, and on September 10, 2025 issued Order No. 25-UI-303157, affirming decision # L0009124612. On September 25, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Winco Holdings Inc. employed claimant at their grocery store from November 30, 2022 until December 21, 2024. Claimant worked as a clerk and forklift driver on overnight shifts at the grocery store.

(2) The employer had a progressive attendance policy. Under the policy, employees received a set amount of paid sick leave annually. If an employee exhausted this leave, they would begin accruing points for unexcused absences, late arrivals, and incomplete shifts. There were numerous types of excused absences that did not accrue points. An employee who accumulated nine or more points in a three-month period or 15 or more points in a twelve-month period was subject to disciplinary action, including discharge. Employees who wished to leave their shifts early were required to obtain a manager's approval, otherwise, the employer treated leaving a shift early as an incomplete shift that accrued points. Under the policy, the employer may consider an employee who leaves their shift early without approval as voluntarily quitting and subject to termination of their employment for having abandoned their job. The employer informed claimant of their attendance policy when he was hired, and each time he received a warning for attendance policy violations.

(3) As of the beginning of October 2024, claimant had exhausted his annual paid sick leave. On October 6, 2024 claimant was absent from a scheduled shift for unknown reasons. The next day, the employer

gave claimant a verbal warning that his October 6, 2024 absence resulted in him accumulating 19 points in a twelve-month period.

(4) On December 1, 2024, claimant arrived ten minutes late from a lunch break for unknown reasons. On December 3, 2024, the employer gave claimant a written warning that his late arrival resulted in him accumulating 21 points in a twelve-month period.

(5) On December 17, 2024, claimant was working his scheduled shift. During the shift, the employer's assistant store manager counseled claimant on work inefficiencies and claimant became angry. Without getting permission from the assistant store manager, claimant left his shift early.

(6) On December 18, 2024, claimant reported to work for his scheduled shift, and the assistant store manager suspended him pending an investigation into his leaving the shift early without approval during the previous shift. The employer determined that claimant left early without permission on December 17, 2024 and that he should be treated as having voluntarily quit and subject to termination of his employment.

(7) On December 21, 2024, the employer discharged claimant for leaving the December 17, 2024 shift early without obtaining permission from his manager.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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).

Although claimant had accrued points under the employer's attendance policy for an absence and a late arrival that occurred earlier in time, the proximate cause of claimant's discharge was his December 17, 2024 leaving of his shift early without obtaining management approval. This is so because the December 17, 2024 early leaving was the incident without which the discharge would not have occurred when it did. *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); *See also* June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division (the last occurrence of an attendance policy violation is considered the reason for the discharge).

The employer met their burden to show that claimant, with wanton negligence, violated the expectation to obtain management approval before leaving his shift early. Claimant knew or should have known that a violation of the employer's policy would result unless he first obtained his manager's approval. That expectation was contained in the employer's attendance policy, and the employer informed claimant of their attendance policy when he was hired, and each time he received a warning for attendance policy violations. Claimant left his shift after the assistant store manager counseled him on work performance issues, and the record shows the manager's counseling made claimant angry. It can therefore be reasonably inferred that claimant failed to obtain approval to leave early due to the manager's counseling and of the anger resulting therefrom, and so was conscious of his conduct and acted with indifference to the consequences.

However, 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).

Although the record contains evidence that claimant was absent from a shift on October 6, 2024 and arrived late from a lunch break on December 1, 2024, the employer did not prove by a preponderance of the evidence that these prior attendance policy violations were willful or wantonly negligent. Both violations occurred due to unknown reasons. It is possible that claimant acted with ordinary negligence in committing the violations, or that they constituted one of the many types of excused absences that did not accrue points under the employer's policy. *See* Exhibit 1 at 3. It is also possible that the attendance violations were due to illness, which is not misconduct. *See* OAR 471-030-0038(3)(b) ("absences due to illness or other physical or mental disabilities . . . are not misconduct."). Because the prior incidents on October 6, 2024 and December 1, 2024 were not proven to be willful or wantonly negligent, the record shows that the December 17, 2024 final incident was a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

Furthermore, claimant's conduct during the December 17, 2024 final incident, leaving a shift early without his manager's prior approval, did not exceed mere poor judgment. 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. Nor did claimant's conduct otherwise make a continued employment relationship impossible.

As such, the December 17, 2024 attendance policy violation for which the employer discharged claimant was an isolated instance of poor judgment and not misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-303157 is affirmed.

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

DATE of Service: October 28, 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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