

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0574

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 28, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective May 18, 2025 (decision # L0012098387).¹ Claimant filed a timely request for hearing. On August 28, 2025, ALJ Parnell conducted a hearing, and on September 5, 2025, issued Order No. 25-UI-302590, reversing decision # L0012098387 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On September 25, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Jacksons Food Stores employed claimant, most recently as the store manager at one of their convenience stores, from June 21, 2021 through May 19, 2025. Claimant previously worked for the employer from 2016 through 2018.

(2) The employer maintained a policy which stated, in relevant part, "In no event should employees disclose or reveal confidential information within or outside the Company without proper authorization or purpose. 'Confidential Information' refers to a piece of information, or a compilation of information, in any form (on paper, in an electronic file, or otherwise), related to the Company's business that the

¹ Decision # L0012098387 stated that claimant was denied benefits from May 18, 2025 to May 23, 2026. However, decision # L0012098387 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 18, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

Company has not made public or authorized to be made public, and that is not generally known to the public through proper means.” Exhibit 1 at 4. Claimant was trained on this policy on several occasions, and was also provided with a copy of it, most recently on January 9, 2025. Claimant generally understood that he was required to maintain the confidentiality of certain types of information, such as medical and employment records.

(3) The employer issued claimant “action plan[s]” regarding his work performance in 2021, 2022, and 2025. Transcript at 16–17. One of these related to claimant having improperly worn a face mask during the COVID-19 pandemic, due to its poor fit.

(4) The employer expected managers to log out of the store’s work computer when they left the store, but to leave it open while they were working. Non-management employees knew “they’re not to read the emails” on the store’s computer. Transcript at 28–29.

(5) In or around early April 2025, claimant had a discussion with the employer’s district manager and regional manager regarding the location of the store’s work computer. Although claimant and the regional manager suggested that the computer should be placed in the store’s back office for purposes of confidentiality, the district manager insisted that the computer be located behind the register counter so that any employees using it could simultaneously monitor the gas pumps outside of the store. The computer was ultimately located behind the register counter.

(6) On April 8, 2025, a hearing was held regarding the unemployment insurance claim of claimant’s former assistant manager, who had recently been discharged. The employer directed claimant to participate and testify in the hearing, and asked all of their witnesses to “conduct the hearings in an office where there was a closed door for confidentiality[.]” Transcript at 7. On that day, claimant was scheduled to work at his store. One employee was absent for medical reasons that day, leading the store to be short-staffed. Claimant notified the employer’s district manager that he was short-staffed for the day of the hearing. The district manager told claimant to “do the best [he] could.” Transcript at 25.

(7) At approximately 1:30 p.m. on April 8, 2025, the hearing began. Claimant called into the hearing line on a phone, and remained on the phone until the hearing ended, shortly before 3:00 p.m. While listening to the hearing claimant moved around the store, including to the back office, the cash register at the front of the store, and the area immediately outside the front door. Claimant did so because, as a result of being short-staffed that day, he needed to complete several other tasks.

(8) When the hearing began, claimant “wasn’t thinking [he was] going to go out there and let everybody hear the hearing.” Transcript at 26. However, for at least a portion of the hearing, claimant’s phone was either on speakerphone or loud enough that the proceedings could potentially be heard by others in claimant’s vicinity, such as other employees or customers. At one point in the hearing, claimant realized that the employer’s other participants in the hearing were communicating with each other, so he sent a text message to the district manager to ask about it. The district manager told claimant that he could log into a chat application on the store’s computer to engage in the discussion, which claimant did. Because the computer was located at the cashier’s counter, the screen’s contents were viewable to anybody behind the counter. Claimant left the computer logged in while he completed other tasks around the store as the hearing continued. At one point during the hearing another employee working that day behind the counter looked at the computer screen and saw a chat message appear on the screen in which

the employer's hearing participants (other than claimant) were discussing the former assistant manager in a derogatory fashion.

(9) During some portions of the hearing, claimant briefly spoke to the other employees about the proceedings, although he did not divulge much information. During other portions of the hearing, the other two employees working discussed the former assistant manager's situation between themselves while claimant was not present. Shortly after the hearing, claimant walked back to the register area, heard the other two employees speaking about the circumstances of the former assistant manager's discharge, and told them to stop gossiping about the matter. Claimant also later learned that the store's employees had been speaking directly to the former assistant manager about the circumstances of his discharge.

(10) On or around May 6, 2025, after the decision on the hearing was issued, the former assistant manager called the employer's human resources department, "insisted that he get his job back," and "complained that [the employer] had an email-thread going [during the hearing] in which [the hearing participants] were 'talking shit'" about him. Transcript at 18. Based on this information, the employer began an investigation into the matter which included reviewing the store's security camera footage from the day of the hearing. After viewing the footage, the employer determined that claimant's actions during the hearing violated their confidentiality policy. On May 19, 2025, the employer discharged claimant because they felt that his conduct during the April 8, 2025 hearing had violated their confidentiality policy.

(11) Prior to April 8, 2025, the employer never had any concerns about claimant's compliance with the confidentiality policy.

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 because they felt that his conduct during the April 8, 2025 hearing had violated their confidentiality policy. This conduct consisted of three separate but related concerns: moving around the store while the hearing was audible to others in the store, leaving the store's computer unattended, and speaking to other employees about the proceedings. As a preliminary matter, the employer's confidentiality policy did not explicitly include expectations relating to unemployment insurance hearings. *See Exhibit 1 at 6–7.* Despite this, the record shows that claimant was generally aware that the employer expected him to maintain the confidentiality of employment records. As the hearing related to the discharge of a former employee, claimant had reason to know that circumstances relating to the former employee's employment would be discussed at the hearing. Therefore, claimant either knew or had reason to know that disclosing anything relating to another employee's employment would probably violate the employer's expectations. However, the employer has not met their burden to show that any of claimant's conduct during or relating to the hearing, even if it did violate their expectations, constituted misconduct.

The above-described conduct was at least partially the result of claimant being required to manage other duties in the store while he was on the hearing call, itself the apparent result of the employer failing to provide sufficient staff for claimant to be able to focus his attention solely on the hearing. As to claimant's walking around or outside the store while the hearing was audible to others around him,² it stands to reason that claimant could have lowered the volume of the phone sufficiently to ensure that it could not have been overheard by others, even if he still needed the phone to be on a speaker function in order to complete other tasks around the store while listening to the hearing. Because claimant did not turn down the volume of the phone or take it off of the speaker function, for at least portions of the hearing when claimant was in public areas of the store, and did not offer an explanation for his failure to do so, it can be reasonably inferred that he acted without regard for the consequences of his actions. Therefore, this conduct was a willful or wantonly negligent violation of the employer's expectations.

Regarding leaving the work computer unattended, claimant testified at hearing that the employer had specifically told him to leave the computer logged in while he was at work. Transcript at 28. The district manager, by contrast, testified that claimant "could have closed Outlook and then logged out of the manager... application," which would have secured the computer from other employees. Transcript at 36. Despite this testimony, the employer did not assert that they *told* claimant to do so. Likewise, the employer's written policies did not clearly require claimant to log out of the computer or take any similar action. *See Exhibit 1 at 4–8.* Moreover, claimant was instructed to log into the application during the hearing. The employer was aware that the computer was located behind the counter, where other employees would be working, and also was aware that claimant was going to be multitasking during the hearing due to being short staffed. Thus, the employer did not rebut claimant's assertion that his conduct was in accord with the instructions they had given him regarding computer usage. Therefore, even if claimant's having left the computer unattended and logged in violated the employer's expectations, it was not a willful or wantonly negligent violation of those expectations under the circumstances.

Finally, regarding speaking to other employees about the proceedings, it is not clear from the record that claimant actually disclosed any material details from the former assistant manager's case to the other

² At hearing, the parties offered differing accounts as to whether the phone was actually on speakerphone. *See Transcript at 6, 24.* Regardless, the record shows that for a portion of the hearing the phone's audio was sufficiently loud as to be audible to others around claimant.

employees in the store. Thus, more likely than not, claimant did not violate the employer's expectations regarding confidentiality by discussing the hearing with other employees.

To the extent that any of claimant's above-described conduct constituted a willful or wantonly negligent violation of the employer's expectations, claimant's conduct was, at worst, an isolated instance of poor judgment. Even if he engaged in multiple individual actions during the course of the hearing that could be considered willful or wantonly negligent, claimant's overall conduct during the course of the hearing was a single occurrence within the employment relationship that involved multiple individual actions.³ While the record shows that the employer had previously issued claimant multiple "action plans," the action plans do not relate to violations of confidentiality, the conduct at issue in this case. For example, one described incident involved claimant having incorrectly worn a face mask in 2022 when his face mask fell below his nose and is insufficient to show that claimant's conduct in that incident was a willful or wantonly negligent violation of the employer's expectations. Therefore, the record does not show that claimant had engaged in any previous instances of willful or wantonly negligent behavior, and his conduct on April 8, 2025 was isolated.

Further, claimant's conduct on April 8, 2025 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 it was not likely to recur, did not impede any essential aspect of the relationship, or threaten its continued existence.

For the above reasons, claimant's conduct on April 8, 2025 was either not a willful or wantonly negligent violation of the employer's standards of behavior or, where it might have been, was no more than an isolated instance of poor judgment. Claimant therefore 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-302590 is affirmed.

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

DATE of Service: October 29, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If

³ See *Perez v. Employment Dept.*, 164 Or App 356, 992 P2d 460 (Or. App. 1999).

you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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