

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0575

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 16, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0011186931). The employer filed a timely request for hearing. On August 29, 2025, ALJ Parnell conducted a hearing, and on September 5, 2025 issued Order No. 25-UI-302555, affirming decision # L0011186931. On September 25, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) Jacksons Food Stores employed claimant as an assistant manager at one of their convenience stores from September 16, 2020 through April 17, 2025.

(2) For locations that included a public restroom, the employer generally expected their employees to keep the restroom open for customer use whenever possible. Claimant's store included a public restroom.

(3) On the morning of April 12, 2025, an individual used the restroom at claimant's store while claimant was working alone. After the individual left, claimant discovered that they had used drugs in the restroom. Based on the lingering vapors and their odor, which made claimant dizzy, he believed that the individual had used fentanyl. As a result of this, and because he did not have time to remedy the situation in the restroom at the time, claimant closed the restroom to the public for the day. Claimant had witnessed his supervisor do the same on multiple prior occasions.

(4) Claimant kept the restroom locked and closed to the public for the remainder of his shift. Despite this, claimant used the restroom himself several times, as did other employees. Additionally, claimant let

some customers use the restroom. For instance, at approximately 7:33 a.m., a man entered the store and asked claimant if his young child could use the restroom. Claimant initially told the man that the restroom was closed, but quickly relented and allowed them to use the restroom.

(5) At approximately 1:05 p.m., another customer, a person of color, entered the store and requested to use the restroom. Claimant told him that the restroom was closed. After a brief exchange, the customer asked for claimant's name. Claimant refused to provide his name, and the customer then left. Claimant had been reticent to engage with the customer because of a previous interaction with him in which the customer had become upset after claimant required him to show identification when attempting to purchase alcohol, and, afterwards, "started recording [claimant] and accusing [claimant] of racism[.]" Transcript at 28.

(6) After leaving the store, the customer sent an email to the corporate office of the employer's affiliate, complaining of claimant's conduct and suggesting that claimant had discriminated against him on the basis of race or skin color. The corporate office forwarded the complaint to the employer.

(7) On April 15, 2025, claimant worked his final shift for the employer. The employer then suspended claimant, pending an investigation into the April 12, 2025 incident.

(8) On April 17, 2025, the employer discharged claimant due to his conduct on April 12, 2025. Prior to that day, the employer had never disciplined claimant for any reason.

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 due to his conduct on April 12, 2025. At hearing, one of the employer's witnesses, a human resources representative, suggested that claimant had either allowed or

denied access to the restroom that day on the basis of race or skin color. Transcript at 5. This allegation aligns with the April 12, 2025 customer complaint which led to the investigation that ultimately resulted in claimant's discharge. It is not clear from the record that claimant had been discriminating against customers on the basis of race or skin color. However, the employer's documentary evidence included an April 17, 2025 email from the district manager who oversaw claimant's store which states, in relevant part:

[Claimant] termination due to an alleged discrimination complaint. In reality, the employee was terminated due to violations of customer service standards policies from closing the restrooms for 9 hours, as seen in the video, and poor customer service.

Exhibit 1 at 6. As this email was drafted on the same day as claimant's discharge, it more likely reflects the actual reason that claimant was discharged. Thus, claimant's decision to keep the restroom closed was the proximate cause of his discharge, and is the proper focus of the misconduct analysis.

Claimant's decision to keep the restroom locked for the duration of his shift on April 12, 2025 was a willful or wantonly negligent violation of the employer's standards of behavior. The employer included with their documentary evidence a two-page document with 26 enumerated employee policies. *See* Exhibit 1 at 10–11. None of these policies included any mention of requirements regarding public restrooms in the employer's stores. Nevertheless, the record shows that the employer generally expected employees to keep the restrooms open for customer use whenever possible. Furthermore, claimant had reason to know that the employer so expected.

As a general matter, because the employer maintained a restroom in their store that was open to the public, it is reasonable to infer that claimant knew that the restroom *should*, for the most part, remain open to the public. At hearing, claimant testified that he had previously witnessed his supervisor close the restroom "for the day" on multiple occasions, apparently due to similar instances of drug use. *See* Transcript at 35. However, claimant did not indicate that his supervisor had closed the restroom for the day on multiple occasions while still allowing employees and some customers into the restroom, as claimant did on April 12, 2025. Thus, even if claimant's supervisor permitted full-day closures of the restrooms under some circumstances, the record does not show that claimant had reason to believe that the employer condoned him keeping the restroom closed on that particular day, when it was apparently safe enough to use that claimant, other employees, and some customers were able to use it. As such, because claimant knew or had reason to know that the employer expected him not to close the restroom for the day, but did so anyway, he violated the employer's expectations with at least wanton negligence.

However, claimant's conduct was an isolated instance of poor judgment. The record shows that claimant had never previously been disciplined by the employer, and does not show that he otherwise violated the employer's expectations willfully or with wanton negligence on any other occasions. Thus, claimant's conduct was isolated. Further, claimant's conduct on April 12, 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 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 non-compliance with a regulatory duty. Therefore, claimant's conduct on April 12, 2025 was an isolated instance of poor judgment, and not misconduct.

For the above reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-302555 is affirmed.

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

DATE of Service: October 24, 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 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.

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