

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0582

Affirmed
Disqualification
Credit for Wages Earned before February 22, 2024 Canceled

PROCEDURAL HISTORY: On June 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, and claimant therefore was disqualified from receiving unemployment insurance benefits effective February 18, 2024 (decision # L0004346183).¹ Also on June 5, 2024, the Department served notice of an administrative decision concluding that claimant's rights to benefits based on wages earned before February 22, 2024 were canceled because she was discharged for committing theft (decision # L0004444917). Claimant filed timely requests for hearing on the administrative decisions. On August 20, 2025, ALJ Scott conducted a consolidated hearing at which claimant failed to appear. On September 15, 2025, ALJ Scott conducted the hearing again, with claimant present. On September 17, 2025, ALJ Scott issued Orders No. 25-UI-304152 and 25-UI-304150, affirming decisions # L0004346183 and L0004444917, respectively. On October 5, 2025, claimant filed applications for review of Orders No. 25-UI-304152 and 25-UI-304150 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 25-UI-304152 and 25-UI-304150 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0582 and 2025-EAB-0583).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Human Solutions Inc., employed claimant from January 2022 until February 22, 2024. The employer was a non-profit organization that assisted participants in obtaining affordable housing and jobs. Claimant worked as a family advocate for the employer.

¹ Decision # L0004346183 stated that claimant was denied benefits from February 18, 2024 to February 22, 2025. However, decision # L0004346183 should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 18, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

(2) The employer gave claimant an employer credit card for use in buying personal property items for participants in the employer's program. The employer required that all credit card purchases be necessary to the operation of the employer's mission and the items purchased be of reasonable cost and quality. The employer prohibited claimant from using the credit card for making personal purchases, and required her to protect the card from loss or theft. Claimant understood these expectations. As of the end of January 2024, the employer imposed a freeze on any use of the credit card. Claimant was advised of the freeze by her supervisor.

(3) Claimant had a history of alcohol and drug abuse. As of January 2024, claimant had been sober for seven years. In late January 2024, claimant's significant other passed away, as did the father of her children, and a cousin. These deaths caused claimant emotional difficulty, which led claimant to relapse and again use alcohol and drugs. Claimant began taking significant time off of work around January 31, 2024, when her significant other passed away.

(4) On February 5 and 6, 2024, claimant used alcohol and drugs while "amongst the wrong people," and became intoxicated. September 15, 2025 Transcript at 19. On February 5 and 6, 2024, claimant or the individuals in her party used the employer's credit card to make nine unauthorized transactions totaling \$749.72. Though intoxicated, claimant consciously used the credit card to buy fuel several times over the course of the two days, costing approximately \$100. The card was also used for transactions at Walmart and to pay the bar tabs at two separate drinking establishments. Claimant did not remember using the card herself to make those latter purchases. She believed that people in her company had used the credit card for the Walmart and drinking establishment purchases, and had access to the card because they were with her. When she used the card for the unauthorized transactions she could remember making, she "intended to repay it in [her] head." September 15, 2025 Transcript at 27.

(5) On February 9, 2024, claimant sent an email to her supervisor advising that she was entering a detoxification program and would be taking a leave of absence. *See Exhibit 2 at 4-6.* Although claimant's sense of embarrassment about having relapsed and improperly using the credit card motivated her to inform the employer that she was pursuing detoxification, claimant did not disclose in the email that she had used the credit card to make the unauthorized purchases.

(6) On or about February 14, 2024, claimant's supervisor discovered the unauthorized credit card purchases while working on the employer's credit card balance sheets. On February 22, 2024, the employer met with claimant regarding her unauthorized use of the credit card. In the meeting, claimant acknowledged using the card for making the fuel purchases, and "took responsibility" for the charges she believed were attributable to the individuals in her party. Exhibit 1 at 5-6. On that date, the employer discharged claimant for violation of their expectations regarding use of the credit card. Claimant paid back most of the \$749.72 via a deduction from her last paycheck.

(7) On February 26, 2024, claimant filed an initial claim for unemployment insurance benefits. The Department transmitted to the employer a notice of claim filed on February 27, 2024. On March 8, 2024, the employer returned the document to the Department, notifying it that the work separation was a discharge for what the employer considered to be theft.

(8) On May 31, 2024, the Department sent claimant a questionnaire regarding the work separation. Claimant responded to the questionnaire the same day. In the questionnaire, claimant was asked, "What

specific workplace policy, procedure, or rule were you fired for violating?” and claimant answered, “Using company credit card without prior authorization.” September 20, 2025 Transcript at 9. The questionnaire also elicited answers in which claimant acknowledged that she was aware of the employer’s policy and that she violated the policy. The questionnaire also asked, “Why did you violate the workplace policy, procedure, or rule?” and claimant answered, “I was having a difficult time. I relapsed and used the card for gas.” September 20 Transcript at 9-10.

(9) Based on her answers to the questionnaire, the Department concluded that claimant had admitted commission of the theft, and had met the requirements for having credit for wages earned before February 22, 2024 canceled due to being discharged for that reason.

CONCLUSIONS AND REASONS: The employer discharged claimant for misconduct. Claimant’s rights to benefits based on wages earned before February 22, 2024 are cancelled due to commission of theft.

Discharge. 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 on February 22, 2024 for violation of their expectations regarding use of the credit card. Those expectations included a prohibition on using the credit card for making personal purchases, that all credit card purchases be necessary to the operation of the employer’s mission and the items purchased be of reasonable cost and quality, and that claimant was required to protect the card from theft or loss. Claimant understood these expectations, and her conduct on February 5 and 6, 2024 violated them with at least wanton negligence.

Claimant was under the influence of alcohol and drugs on February 5 and 6, 2024. Though she was intoxicated on those dates, claimant testified at hearing that she made “a poor decision” and “used the company credit card, um, for what I remembered at the time, uh, was gas several times.” September 15, 2024 Transcript at 27. Claimant further testified that she “intended to repay it in my head[.]” September

15, 2024 Transcript at 27. Thus, while claimant stated at hearing that she could not remember making certain of the purchases, it is undisputed that, although intoxicated, claimant made a conscious decision to use the card for the fuel purchases, conduct she knew was prohibited, and did so with deliberate forethought, since she formed the intent to repay the employer for the purchases. Claimant therefore acted consciously and with indifference to her actions, resulting in a violation of the credit card policy that she knew or should have known would probably result. Thus, claimant violated the employer's expectations with wanton negligence.

Claimant's wantonly negligent violation was not an isolated instance of poor judgment because it exceeded mere poor judgment. By using the employer's credit card for her own purposes, while intoxicated, and failing to safeguard its use by others in her company, claimant engaged in an irreparable breach of trust in the employment relationship. Also, as discussed below, claimant's conduct constituted theft and so violated the law or was tantamount to unlawful conduct. Therefore, claimant's wantonly negligent violation does not fall within the exculpatory provisions of OAR 471-030-0038(3), and so does not amount to an isolated instance of poor judgment.

Claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective February 18, 2024.

Cancellation of wage credits earned before February 22, 2024 due to commission of theft. If the Department finds that a claimant was discharged for misconduct because of the commission of a felony or theft in connection with work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the employer notifies the Department of the discharge within 10 days after the notice of claim filed was issued or 30 days after the initial claim determination was issued, and:

- (a) The claimant has admitted commission of the felony or theft to the Department;
- (b) The claimant has signed a written admission of the felony or theft and the written admission has been presented to the Department; or
- (c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

ORS 657.176(3).

Applying the elements of ORS 657.176(3), the record supports that claimant's credit for wages earned prior to her February 22, 2024 discharge date should be canceled.

First, the employer notified the Department that they had discharged claimant within 10 days after the Department issued the notice of claim filed. On February 27, 2024, the Department transmitted to the employer a notice of claim filed, giving notice that claimant had filed an initial claim for unemployment insurance benefits. Within 10 days of that date, on March 8, 2024, the employer returned the document to the Department, notifying it that the work separation was a discharge for what the employer considered to be theft.

Second, the record is sufficient to conclude that claimant admitted commission of the theft to the Department via her answers to the Department's questionnaire. In the questionnaire, claimant was asked,

“What specific workplace policy, procedure, or rule were you fired for violating?” and claimant answered, “Using company credit card without prior authorization.” September 15, 2025 Transcript at 9. The questionnaire also elicited answers in which claimant acknowledged that she was aware of the employer’s policy and that she violated the policy. The questionnaire also asked, “Why did you violate the workplace policy, procedure, or rule?” and claimant answered, “I was having a difficult time. I relapsed and used the card for gas.” September 15, 2025 Transcript at 9-10. Because claimant admitted that she was aware of the policy against unauthorized use of the credit card, but then used the card for gas without authorization, the evidence is sufficient to conclude that claimant admitted to commission of the theft to the Department under ORS 657.176(3)(a).

Third, claimant’s conduct constituted theft under ORS 164.015(1), and thus claimant was discharged for misconduct because of the commission of theft in connection with work. Under ORS 164.015(1), a person commits theft “when, with intent to deprive another of property or to appropriate property to the person,” the person “takes, appropriates, obtains or withholds such property from an owner thereof.” ORS 164.015(1). “With intent” means that “a person acts with a conscious objective to cause the result or to engage in the conduct so described.” ORS 161.085(7). Thus, “if the requirements of ORS 164.015(1) are otherwise met, a person commits theft if the person acts with the conscious objective to either deprive another of property or to appropriate property from the person.” *In re Phinny*, 354 Or. 329, 333, 311 P.3d 517 (2013).

Here, though intoxicated at the time, claimant acted with the conscious objective to appropriate property from the employer, by using the employer’s line of credit to purchase fuel. Claimant then completed the appropriation of property by using the credit card to make the fuel transactions. While claimant may have “intended to repay” the fuel costs “in [her] head,” that intention did not negate her demonstrated intent to appropriate the employer’s property to pay for the fuel. *See In re Phinney*, 354 Or. 329, 335, 311 P.3d 517 (2013) (where the accused was secretary of an alumni association and had taken association funds for his own purposes, intending “to only temporarily borrow the money,” the accused violated ORS 164.015(1) and his intention “to repay the funds he withdrew at some time in the future does not negate his demonstrated intent to appropriate the funds under ORS 164.015(1).”).

Further, claimant was voluntarily intoxicated at the time she used the card to make the fuel purchases. ORS 161.125(1) provides as follows:

The use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs or controlled substances, or was dependent on drugs or controlled substances, or was intoxicated may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

Case law explains that the meaning of this provision is that “‘voluntary intoxication’ is not something that excuses criminal conduct altogether (like the self-defense or necessity defenses), but it can be a fact relevant to whether a defendant acted knowingly or intentionally.” *State v. Irish*, 340 Or.App 341, 345, 571 P.3d 195 (2025). Therefore, “[a]s a practical matter,” someone’s “‘voluntary intoxication’ is no different than any other fact that may bear on a defendant’s mental state.” *State v. Irish*, 340 Or.App 341, 346, 571 P.3d 195 (2025).

The record fails to show that claimant's intoxication negated her intention to appropriate the employer's property. Though intoxicated, the record shows that claimant used the credit card to buy fuel and it was her conscious objective to do so. Claimant testified at hearing that she made "a poor decision" and "used the company credit card, um, for what I remembered at the time, uh, was gas several times." September 15, 2024 Transcript at 27. Therefore, although she was intoxicated, claimant acted intentionally regarding the fuel purchases. Accordingly, claimant's conduct constituted theft under ORS 164.015(1), and claimant was therefore discharged for misconduct because of the commission of theft in connection with work.

For the reasons discussed above, the elements of ORS 657.176(3) are met and claimant's rights to benefits based on wages earned prior to her February 22, 2024 discharge date are canceled.

DECISION: Orders No. 25-UI-304152 and 25-UI-304150 are affirmed.

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

DATE of Service: October 31, 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.