

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0584

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 7, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0011661562). The employer filed a timely request for hearing. On September 18, 2025, ALJ Parnell conducted a hearing, and on September 23, 2025, issued Order No. 25-UI-304655, affirming decision # L0011661562. On October 6, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At hearing, an audio file of a voicemail and three separate image files depicting text or social media messages submitted by claimant were collectively admitted as evidence as Exhibit 2. Order No. 25-UI-304738 at 1. To allow for citation to this evidence, the image files have been re-marked as EAB Exhibit 1 and a copy provided to the parties with this decision. Exhibit 2 now consists of only the audio file.

CONCLUSIONS AND REASONS: (1) Canyon Crisis Center employed claimant as a program office manager from February 17, 2023 through June 13, 2024.

(2) On days that claimant worked, her work hours were typically from 9:30 a.m. to 5:30 p.m. The employer expected their employees to arrive on time and work the full duration of their shifts. Claimant understood this expectation.

(3) On the evening of June 12, 2024, claimant went to her supervisor's home to receive a gift for claimant's upcoming college graduation, which was to occur on Saturday, June 15, 2024. At that time, the two discussed claimant's plans for the future, as the supervisor feared that claimant intended to quit

and move to another part of Oregon after her graduation. Claimant assured the supervisor that she did not intend to quit work or move away. Claimant agreed to participate in a “safety fair” in another city the following day, and was expected to report for work at that location at 10:00 a.m. Transcript at 6.

(4) On June 13, 2024, at approximately 8:30 a.m., the supervisor and a coworker began calling and texting claimant, and messaging her on Facebook, to ensure that she would be at the safety fair site on time, as they had concerns about her punctuality. Claimant did not answer the calls or immediately respond to the messages because she was showering and getting ready for work, and did not know they had been received. The supervisor assumed that claimant was not responding because she was busy packing to move to another city and had never actually intended to report for work again.

(5) At approximately 9:17 a.m., the supervisor left claimant a voicemail in which she stated, in relevant part, “I just don’t know what happened to you, but I also know now you don’t have a job. You did an Oscar-worthy performance last night. . . and I guess you musta had this planned all along. . . You go up to the [employer’s office], I’ll have you arrested for trespassing ‘cause you now are officially fired,” and talked about claimant’s final paycheck. Exhibit 2 at 0:02. At 9:30 a.m., after having listened to this voicemail, claimant called the supervisor and explained that she had been getting ready for work and had planned to be at the safety fair site by 10:00 a.m. The supervisor told claimant that if she would go to the safety fair site and work, she would still have a job. Claimant did not go to the safety fair site.

(6) At 10:18 a.m., the supervisor texted claimant, “So you are now officially Fired. . . Again[,] you don’t go near the office or I will have you arrested.” EAB Exhibit 1 at 3. Claimant did not report for work that day, in part because she believed she had been discharged. The employer believed that claimant had quit work by not reporting for work at the safety fair site by 10:00 a.m.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship.

If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

The parties disputed the nature of the work separation. The parties agreed that claimant did not respond to her supervisor’s attempts to communicate with her between approximately 8:30 a.m. and 9:17 a.m. on June 13, 2024, and that claimant was expected to be at work at 10:00 a.m. Claimant testified that the supervisor left her a voicemail at “around” 9:17 a.m., and the record shows that she stated in that voicemail, “[N]ow you don’t have a job. . . you now are officially fired,” and that she would have claimant arrested if she went to the employer’s office. Transcript at 30; Exhibit 2 at 0:02. The employer did not rebut this evidence. The supervisor testified that claimant called her after listening to the voicemail, expressing confusion about why she had been discharged and threatened with arrest, and said that she had been preparing to leave for the worksite. Transcript at 7-8. The supervisor further testified that she told claimant, “Okay, if you show up, you still have your job. If you don’t show up, then I’ll take it you decided not to come.” Transcript at 8. Claimant did not report for work at 10:00 a.m., and at

10:18 a.m., the supervisor sent claimant a text, stating that claimant was “officially Fired” and again threatening her with arrest if she came to the employer’s office. EAB Exhibit 1 at 3. Claimant did not attempt to work for the employer thereafter.

The record shows that prior to 9:17 a.m. on June 13, 2024, claimant had intended to report for work as scheduled, and never indicated otherwise to the employer. Claimant’s failure to respond to the employer’s attempts to communicate with her prior to her scheduled start time did not give the employer an objective basis for believing that she had quit work. In contrast, claimant’s supervisor explicitly told claimant in the 9:17 a.m. voicemail that she was “officially fired,” thereby indicating to claimant that she was no longer allowed to work for the employer. Exhibit 2 at 0:02. Although the parties later discussed on the telephone claimant potentially still reporting for work that day, the employment relationship had already been severed by the employer at the time the voicemail was left. The employer’s offer to rehire claimant if she reported for work that day did not alter the nature of the work separation that had already occurred. Claimant did not accept the offer by reporting for work following the telephone conversation, and the employer effectively revoked it at 10:18 a.m. through the supervisor’s text, which reiterated that claimant was discharged and not welcome at the employer’s office. Accordingly, the work separation was a discharge that occurred on June 13, 2024 at 9:17 a.m.

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). “[W]antonily 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).

The employer discharged claimant after she failed to answer calls or respond to messages to confirm she would be at the safety fair at the agreed 10:00 a.m. start time. The employer reasonably expected that their employees would arrive at work on time, and claimant understood this expectation. Claimant was discharged at 9:17 a.m., prior to her usual start time of 9:30 a.m., and well before she was supposed to be at the worksite that day at 10:00 a.m. Therefore, the employer knew that claimant had not violated this expectation at the time they discharged her. As claimant was discharged before she could possibly have been late to work that day, it is reasonable to infer that her discharge was based on her supervisor’s frustration at claimant not communicating with her prior to 9:17 a.m., and her assumptions that claimant would not only be late for work, but did not plan to continue working for the employer at all.

The record does not suggest that the employer had an established policy requiring hourly employees to promptly return calls or messages from their supervisor outside of their scheduled work hours. Even if such a policy had been shown to exist, it would not necessarily involve a standard of behavior that an employer has the right to expect of their employees. Moreover, the employer has not shown that claimant was aware of such an expectation prior to being discharged. The calls and messages at issue occurred from approximately 8:30 a.m. through 9:17 a.m., a period in which claimant testified she was

showering and preparing to go to work, and was therefore not monitoring her phone. Transcript at 29-30. Accordingly, the employer has not shown that claimant consciously decided to ignore the calls and messages or delay responding to them, which is required to show that she acted willfully or with wanton negligence.

To the extent that claimant's supervisor discharged claimant because she anticipated a violation of the attendance policy and assumed claimant was preparing to abandon her job that morning, the record shows no objective basis for these beliefs. Both parties agreed that claimant visited the supervisor's home the previous night to accept a graduation gift, and reaffirmed at that time that she did not plan to move to another part of the state or quit working for the employer. That claimant was unreachable for approximately 45 minutes the next morning, at a time when she would likely be focused on getting ready for work rather than closely monitoring her phone, would not reasonably suggest that claimant planned to be late or to abandon her job that day. Accordingly, the employer discharged claimant for reasons other than believing that she had violated a reasonable policy, and therefore she was not discharged for 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-304655 is 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.surveymizmo.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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