EO: Intrastate
BYE: 04-Apr-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

174
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0590

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 9, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective April 6, 2025 (decision # L0011763816).[1] Claimant filed a timely request for hearing. On September 11, 2025, ALJ Scott conducted a hearing, and on September 18, 2025, issued Order No. 25-UI-304251, affirming decision # L0011763816. On October 8, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: Exhibit 1 consists of four image files, and Exhibit 2 consists of two image files. To facilitate citation to this evidence, the files for each exhibit have been combined, marked as EAB Exhibit 1 and 2, respectively, and copies provided to the parties with this decision.

WRITTEN ARGUMENT: Claimant filed written arguments on October 8, 10, and 28, 2025. Claimant did not state that he provided a copy of his October 8, 2025 argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019), and it was therefore not considered. The October 10 and 28, 2025 arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2). EAB considered the October 10, 2025 argument to the extent it was based on the hearing record.[2]

[1] Decision # L0011763816 stated that claimant was denied benefits from April 6, 2025 to April 4, 2026. However, decision # L0011763816 should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 6, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

[2] The October 28, 2025 filing was a copy of an April 8, 2025 email from the Bureau of Labor and Industries (BOLI) acknowledging receipt of a complaint, and did not contain a substantive argument from claimant.

FINDINGS OF FACT: (1) Serendipity Inc. employed claimant as a payroll and benefits administrator for a school from May 20, 2024 through April 8, 2025.

(2) The employer had a written attendance policy which stated, in part: "In the event that you are unable to report for work on time (within ten minutes of your scheduled start time), you are expected to personally notify your **supervisor** at least one hour prior to your scheduled work time. . . If for some reason you are not able to personally get a hold [*sic*] of your supervisor (If you are unable to speak with them, or you do not receive a response via email/text), you will need to let the **receptionist** know of your absence and they will make note of your absence." EAB Exhibit 1 at 1–2 (emphasis in original). Claimant received a copy of this policy at hire.

(3) On March 19, 2025, claimant received an all-employee email sent by an intern regarding an event unrelated to work, and responses to it sent by others using the reply-all function. Receiving these types of emails frustrated claimant, whose position required vigilance for time-sensitive work-related emails. That day, claimant sent an email to all employees, written entirely in capital letters, urging them to stop using the reply-all function. In a second all-employee email sent that day, claimant provided step-by-step instructions illustrated with screenshots describing how to avoid sending reply-all emails, and stated that any complaints about claimant's emails could be directed to a dumpster outside the building. Several employees contacted claimant's supervisor to complain about his emails.

(4) On March 20, 2025, after reviewing these complaints, claimant's supervisor told claimant by text message that the tone of his emails was not appropriate, and that claimant should just delete unwanted emails or direct complaints about that subject to him. Claimant replied by stating, in part, that he was using accrued leave to take the remainder of the day off.

(5) On March 21, 2025, claimant was absent from work and did not attempt to notify his supervisor that he would be absent. However, claimant notified the receptionist that he would be absent. Later that day, in an online chat with his supervisor, claimant discussed potentially seeking protected leave for an extended period, and that he would likely not return to work until at least March 31, 2025. Later that day, claimant sent a request to the employer's information technology (IT) department to be excluded from all-employee emails and, potentially, other email groupings.

(6) Following the online chat, claimant's supervisor notified the employer's human resources partner, Xenium, of claimant's intent to seek protected leave. Xenium contacted claimant and explained the requirements for seeking protected leave, but claimant did not submit a completed application with the necessary supporting documentation. On March 31 and April 1, 2025, claimant was absent from work and did not attempt to notify his supervisor that he would be absent, though claimant ultimately notified the receptionist each day of his absence.

(7) On April 2, 2025, claimant did not report for work. Claimant's supervisor texted claimant that morning that he needed to notify the supervisor, rather than the receptionist, whenever he would be absent, in accordance with the written policy. In response, claimant called the receptionist and told them that he would be working from home that day, though claimant did not have his work laptop with him. When claimant's supervisor learned of this, he again texted claimant that claimant needed to communicate with him, and that claimant needed to seek permission to work from home. Claimant replied that he would be working from home "to facilitate a return to work." Transcript at 14.

(8) On April 7, 2025, claimant was absent from work and did not attempt to notify his supervisor, but notified the receptionist. After claimant's supervisor discovered this, he again texted claimant that he needed to follow the written policy and notify the supervisor when he would be absent. Claimant did not reply.

(9) On April 8, 2025, claimant reported for work. By approximately 8:10 a.m., claimant's supervisor had tried to have a discussion with claimant regarding his behavior since March 19, 2025, but claimant was "not receptive" to meeting with him. Transcript at 15. During the interaction, claimant "doubled down" on his position regarding all-employee and reply-all emails, and did not explain his apparent aversion to communicating with the supervisor about his attendance or other issues over the past two weeks. Transcript at 15. The supervisor decided to evaluate how to proceed with the employment relationship, and told claimant as much. Claimant then left work, stating that he would be using sick leave for the rest of the day.

(10) At some point during the April 8, 2025 interaction, claimant mentioned wanting to speak to the employer's board to complain about his supervisor questioning his behavior and attendance, which claimant felt was "unprofessional conduct" by the supervisor and a "conflict of interest." Transcript at 27. Claimant did not do so before leaving work for the day. Approximately ten minutes after claimant left work, he texted his supervisor that he would not be using accrued leave to cover his absence that day, as he felt the employer was not allowing him to work. The supervisor replied that he was discharging claimant because he could not "get past that aggressive email [claimant] sent to all staff. . . [and his] resistance to receive feedback about it, lack of communication these past few weeks and lack of personal accountability for [his] own actions[.]" EAB Exhibit 2 at 7. Claimant did not work for the employer thereafter, but was paid through the following day.

CONCLUSIONS AND REASONS: Claimant was discharged 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 behavior following feedback from his supervisor regarding emails claimant sent on March 19, 2025. The employer essentially issued claimant an informal warning for sending the emails, as they concluded that claimant had not sent them with malice and did not understand that they would be viewed by others as inappropriate and unprofessional. Claimant's supervisor testified that the warning included a directive to ignore the reply-all emails that had prompted claimant to write his emails objecting to them, and to direct any future complaints on the subject to his supervisor. Transcript at 7. Claimant did not rebut this testimony.

On March 21, 2025, the day following the warning, claimant requested that the employer's IT department remove him from being included in all-employee emails, and possibly other email groupings, without first consulting his supervisor. In the two weeks that followed the warning, claimant was frequently absent from work, and largely avoided communicating with his supervisor while disregarding his directives, as discussed in greater detail below. When claimant reported for work on the morning of April 8, 2025, the supervisor attempted to discuss the emails and claimant's ensuing behavior. The supervisor testified that claimant was "not receptive" to having such a discussion, but that he "doubled down" on his opposition to receiving the types of emails that led him to send the March 19, 2025 emails. Claimant did not rebut this testimony. These actions led the employer to believe that claimant did not intend to abide by the directive in the warning, which was part of the reason he was discharged. Claimant's failure to abide by the attendance notice policy and other directives of his supervisor between March 21 and April 8, 2025, were also reasons for claimant's discharge.

The employer reasonably expected that their employees would notify their supervisor if they would be absent from work, and would direct such notice to the employer's receptionist only when the supervisor could not be reached. Claimant received a copy of this policy at hire. Claimant's supervisor texted claimant on April 2, 2025, reminding him that he must contact the supervisor rather than the receptionist when he would be absent, after he had repeatedly failed to abide by the policy. Claimant did not rebut the employer's testimony that he was absent from work including on March 21 and 31, 2025, and April 1 and 7, 2025, and that on those occasions he notified only the receptionist, without attempting to notify his supervisor.

Claimant gave several reasons for not attempting to notify his supervisor that he would be absent on those occasions. Claimant asserted that the written policy's use of the words "expected to" in introducing the procedure for reporting absences meant that it was a suggestion that he was free to either follow or ignore, rather than "an explicit requirement." Transcript at 21, 29. This assertion has no merit, particularly concerning absences after claimant's supervisor clarified in the April 2, 2025 text that compliance with the policy was mandatory. Claimant also asserted that he did not report his absences to his supervisor because he "did not feel comfortable" doing so due to an act of "sexual harassment" that had allegedly occurred approximately nine to twelve months earlier, and which claimant had never attempted to report to the employer during his employment. Transcript at 28-29. Claimant explained the basis of the allegation as the supervisor having messaged him on an online platform outside of work, and claimant testified that he did not report this to the employer during his employment, due, in part, to claimant's belief that sending the message to him had not been "intentional." Transcript at 30. This explanation for claimant failing to notify his supervisor of absences also lacks merit, as the timeline of events shows that, more likely than not, claimant's decisions regarding communicating with the supervisor were based on events occurring on and after March 19, 2025, and not one that occurred nearly a year prior. Finally, claimant asserted that throughout his employment, he had notified the

receptionist of his absences, rather than his supervisor, and the employer had never objected to this until April 2, 2025. The employer did not rebut this assertion. On this evidence, it was reasonable for claimant to infer that the employer had not intended to enforce the policy regarding the absences occurring prior to April 2, 2025, and his violation of the policy on those occasions was therefore not willful or wantonly negligent. However, claimant knew as of that date that the employer intended to enforce the policy. Therefore, claimant's failure to follow the policy in reporting his absence on April 7, 2025 was, more likely than not, willful, and constituted misconduct.

Isolated instances of poor judgment are not misconduct. The record shows that claimant willfully violated the employer's reasonable attendance notification policy on April 7, 2025. Although a single instance of willful or wantonly negligent behavior, claimant's conduct the following day demonstrated to the employer that he likely did not intend to comply with the policy thereafter, and was also unwilling to comply with other reasonable employer directives going forward.

As previously discussed, on April 8, 2025, claimant "doubled down" on his opposition to receiving reply-all emails, and had, in essence, complained to the IT department about such emails a day after being directed by his supervisor to send all complaints on that subject to him. It is reasonable to infer from this conduct that claimant did not take seriously the employer's concerns about his vocal opposition to these emails, and that he would likely continue to disregard the directive to stop making an issue of them. Additionally, on April 2, 2025, clamant did not report for work, and after his supervisor texted that he expected claimant to comply with the written attendance notification policy, claimant notified the receptionist that he would be working from home that day, despite not having a work laptop with him, or having asked his supervisor for permission to do so. After claimant's supervisor responded by texting claimant that he needed permission to work from home, claimant did not report in person or seek permission to work from home that day. Claimant's seemingly willful violation of this directive, his unjustifiable refusal to consistently communicate with his supervisor on important workplace issues for more than two weeks, and his handling of the email issues contrary to the directives of the warning, collectively demonstrated to the employer that a continuing employment relationship was not possible following claimant's April 7, 2025 willful attendance notification policy violation. Therefore, that violation exceeded mere poor judgment and cannot be excused under the rule. Accordingly, claimant was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective April 6, 2025.

DECISION: Order No. 25-UI-304251 is affirmed.

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

DATE of Service: <u>November 6, 2025</u>

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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.

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