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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0595

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 20, 2024, 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 work separation (decision # L0007850084). The employer filed a timely request for hearing. On February 18, 2025, ALJ Wardlow conducted a hearing at which claimant failed to appear, and on February 20, 2025, issued Order No. 25-UI-283591, affirming decision # L0007850084. On March 7, 2025, the employer filed an application for review with the Employment Appeals Board (EAB). On April 8, 2025, EAB issued EAB Decision 2025-EAB-0149, remanding the matter for further development of the record to determine whether claimant was discharged for misconduct. On September 16, 2025, ALJ Wardlow conducted a hearing at which claimant failed to appear, and on September 22, 2025, issued Order No. 25-UI-304577, re-affirming decision # L0007850084 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On October 9, 2025, the employer filed an application for review of Order No. 25-UI-304577 with EAB.

FINDINGS OF FACT: (1) Lowe's Home Centers, LLC employed claimant from March 18, 2013 through March 19, 2024.

(2) The employer maintained a safety policy requiring employees to "freeze the scene" when an accident occurs or damaged product is received, and then contact a supervisor to determine how to proceed. February 18, 2025 Audio Record at 9:58. The employer explained this policy to employees during orientation, and reviewed it with employees periodically during regular safety trainings.

(3) On June 13, 2013, claimant accidentally knocked a computer monitor off of a table while he was moving a pallet with his forklift. On April 14, 2014, claimant failed to successfully negotiate a turn while operating his forklift, which resulted in him hitting a parked forklift. On December 30, 2015, claimant hit an earthquake support beam with his forklift. For each of these three incidents, the employer engaged claimant in "safety review[s]," but did not issue him written warnings. September 16, 2025 Audio Record at 29:20.

(4) On August 12, 2021, the employer issued claimant a written warning which alleged that claimant had "not [been] following basic conduct and staying on task" on or around July 19, 2021. Order No. 25-UI-304577, Exhibit 1 at 24. The written warning indicated that claimant had previously explained that this was because he "had to get something from [another employee] and then had a conversation about [claimant's] weekend." Order No. 25-UI-304577, Exhibit 1 at 24. The written warning also stated that claimant had been "previously coached on this behavior and [his] overall job… performance on 4/1/21, 4/6/21, 6/16/21, [and] 6/29/21." Order No. 25-UI-304577, Exhibit 1 at 24.

(5) On June 2, 2023, while in the process of receiving products, claimant failed to properly log one of the products he received, resulting in a "Mis-Receipt" and subsequent "false overage" of $2,162.88. Order No. 25-UI-304577, Exhibit 1 at 18. On June 13, 2023, the employer issued claimant a written warning for this incident, asserting that claimant "engaged in unproductive behavior" which led to the false overage. Order No. 25-UI-304577, Exhibit 1 at 18.

(6) On June 29, 2023, and July 18, 2023, the employer issued claimant warnings relating to ten "attendance occurrences" that claimant accrued between August 1, 2022 and May 31, 2023. Order No. 25-UI-283591, Exhibit 1 at 11. Because the employer had a "no fault" attendance policy, employees were not required to report the reasons for their absences, and the employer did not ask for them. September 16, 2025 Audio Record at 32:11. As such, the employer did not record the reasons that claimant was absent on those dates.

(7) On March 13, 2024, claimant was unloading a visibly-damaged and leaking pallet of herbicide. Instead of immediately "freezing the scene" or contacting his supervisor to determine how to proceed, claimant attempted to unload the pallet. During the attempt, claimant tried to "piggyback" the damaged pallet onto another pallet, crushing the damaged product and causing it to rupture. February 18, 2025 Audio Record at 10:35. This resulted in some of the herbicide spraying from the damaged package, which got in claimant's eyes and mouth, as well as on nearby equipment.

(8) After the damaged product ruptured, claimant did not contact a supervisor. Instead, he went to the restroom to clean himself off. Coincidentally, claimant's supervisor was in the restroom at the same time, and asked claimant what happened. After claimant explained what happened, the supervisor found the safety data sheet (SDS) for the substance that claimant had been sprayed with, determined that claimant needed to immediately flush out his eyes at the emergency eye wash station, and directed claimant to do so.

(9) On March 19, 2024, the employer discharged claimant for violating their safety policy on March 13, 2025 by failing to "freeze the scene" or contact a supervisor after unloading the damaged pallet.

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 of an incident which took place on March 13, 2024.[1] During that incident, claimant unloaded a pallet with damaged product and, instead of "freezing the scene" and contacting a supervisor, took actions that caused further damage and resulted in getting himself and the employer's equipment doused with herbicide. These actions violated the employer's policy, which specifically required him to "freeze the scene" and contact a supervisor instead of attempting to handle the situation on his own.

The record shows that the employer explained this policy to new employees at orientation, and reviewed it with all employees periodically. As claimant did not appear at the hearings, he did not offer evidence to show that he was unaware, or did not have a reason to be aware, of this policy. Given this, as well as claimant's eleven-year tenure with the employer, it is reasonable to infer that claimant likely was aware of and understood the employer's policy. It also can be inferred that claimant either chose to disregard the policy, or failed to consider that his actions would probably result in a violation of the policy, in acting as he did on March 13, 2024. Therefore, claimant's conduct leading to his discharge was at least wantonly negligent. However, claimant's conduct on March 13, 2024 was, at worst, an isolated instance of poor judgment.

Claimant's conduct on March 13, 2024 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 did not impede any essential aspect of the relationship or threaten its continued existence. Thus, whether claimant's conduct that day can be excused as an isolated instance of poor judgment turns on whether it was isolated. The record shows that it was.

The record does not show that claimant had previously violated the employer's safety policy as he did on March 13, 2024. As such, his conduct that day was not a repeated act. The employer offered evidence of, broadly, four other types of concerns regarding claimant's conduct that occurred prior to the final

[1] In both hearings, the employer's witnesses asserted that this incident took place on March 18, 2024. However, the actual incident report shows that the incident took place on March 13, 2024. *See* Order No. 25-UI-304577, Exhibit 1 at 19.

incident. Based on these other concerns, the employer did not meet their burden to show that his conduct that day was part of a pattern of other willful or wantonly negligent behavior.

The first of these concerns related to three accidents that claimant was involved in in 2013, 2014, and 2015, all while he was operating his forklift. The record suggests that claimant may have caused some, or all, of those accidents, and that this might have been the result of negligence on his part. However, the record lacks details regarding what actually led to those events, such that it could be determined that claimant acted either intentionally or without regard for the consequences of his actions. As such, the record does not show, by a preponderance of the evidence, that any of these accidents were the result of willful or wanton negligence on claimant's part. Moreover, these incidents were remote in time to the March 13, 2024 incident.

The next relates to a written warning issued on August 12, 2021, involving claimant allegedly not having "follow[ed] basic conduct and staying on task," and which also indicated that claimant had been "coached" on similar behavior and "overall" job performance on four other dates in April and June 2021. The record contains no other information on these incidents, other than the broad explanation that claimant had apparently engaged in a conversation about his weekend with another employee during the July 2021 incident. This is insufficient to show that claimant violated any of the employer's expectations willfully or with wanton negligence during any of those incidents.

The next concern relates to an incident on June 2, 2023 in which claimant failed to properly log one of the products he had received, resulting in a "false overage" for the employer. The written warning that the employer gave claimant for this incident noted only that it was the result of "unproductive behavior within the workplace." At hearing, one of the employer's witnesses expanded on this, testifying that she believed that claimant had been engaging in "horseplay and just messing around" with other employees at the time, and that this behavior led to the "false overage." September 16, 2025 Audio Record at 18:35. Even assuming the witness's testimony to be correct, this is insufficient to show what claimant actually did that led to the "false overage," or that he acted without regard for the consequences of his actions in doing so. As such, the employer has not shown that this incident was the result of willful or wantonly negligent behavior.

Finally, claimant received two written warnings, in June and July 2023, relating to ten "attendance occurrences" which he had accrued between August 2022 and May 2023. The employer did not have a record of what those attendance occurrences involved, or why they happened. As such, this is also insufficient to show that claimant violated any of the employer's expectations willfully or with wanton negligence during any of those incidents.

Because the record does not show that claimant had previously violated the employer's expectations willfully or with wanton negligence, claimant's conduct on March 13, 2024 was isolated, and therefore an isolated instance of poor judgment, which is not misconduct. Therefore, 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-304577 is affirmed.

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

DATE of Service: November 10, 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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