

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0608

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 13, 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 June 15, 2025 (decision # L0012345464).¹ Claimant filed a timely request for hearing. On October 2, 2025, ALJ Micheletti conducted a hearing, and on October 8, 2025, issued Order No. 25-UI-306444, affirming decision # L0012345464.² On October 14, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because he did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Orient Electric, Inc. employed claimant from November 28, 2016 until June 20, 2025, last as a journeyman electrician.

(2) The employer expected their employees to work their entire shifts except for authorized breaks. The employer also expected that journeymen electricians, such as claimant, who supervised apprentices, would not leave those apprentices alone on a job site at any time. Claimant understood these expectations.

(3) On December 22, 2023, the employer investigated complaints that claimant had, on multiple occasions, been sitting in his van across the street from a worksite at times when he was supposed to be

¹ Decision # L0012345464 stated that claimant was denied benefits from June 15, 2025 to April 25, 2026. However, decision # L0012345464 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 15, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

² Order No. 25-UI-306444 concluded that claimant was discharged for a disqualifying act under ORS 657.176(2)(g), rather than for misconduct. *See* Order No. 25-UI-306444 at 2-3. However, the outcome of disqualifying claimant from benefits, effective June 15, 2025, remains the same.

working and supervising an apprentice. Claimant had been taking these unauthorized breaks due to the effects of alcohol he had consumed prior to his shifts, though he did not consume alcohol and was not intoxicated during work hours. Claimant admitted to these absences from the worksite but did not disclose the reason for them, and was reassigned to a different worksite. The employer received similar complaints about claimant's attendance every three to four months following the December 22, 2023 disciplinary action.

(4) On June 13, 2025, the employer again investigated a complaint regarding claimant's unauthorized absence from the worksite. Claimant was away from the worksite that day to get parts for the job he was working on, and to take a lunch break, which claimant believed was authorized. However, claimant admitted to the employer that he generally "would work off and on throughout the day," taking unscheduled breaks in his van of up to an hour due to "being too tired from having drank the night before or just not in the right mental state." Transcript at 16. Claimant was suspended from work until June 20, 2025, when the employer discharged him for his unexcused breaks from work and the employer's belief that claimant had left an apprentice unsupervised.

(5) On June 13, 2025, claimant sought treatment through Kaiser Permanente ("Kaiser") for alcohol use disorder. An outpatient treatment plan was developed while he waited for an opening to become available at their Brookside inpatient facility. Claimant attended various outpatient appointments pursuant to that plan until July 4, 2025, when he was admitted to Brookside. Claimant completed inpatient treatment on July 27, 2025. Kaiser and its Brookside facility, part of Sunnyside Medical Center, are licensed under ORS chapter 441 to provide inpatient and outpatient medical care.³

(6) On October 2, 2025, claimant provided documentation to the Office of Administrative Hearings (OAH) that he had participated in inpatient and outpatient alcohol use disorder treatment from June 13 through July 27, 2025.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct or a disqualifying act.

Under ORS 657.176(2), a claimant is disqualified from receiving benefits if they have been discharged or suspended for:

(g) being absent or tardy in reporting to work and the absence or tardiness occurred as the result of the use of alcohol or cannabis on a second or any subsequent occasion within a period of 12 months unless the person was participating in a recognized alcohol or cannabis rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the

³ EAB has taken notice of this fact, which is a generally knowable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at

<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/HEALTHCAREPROVIDERSFACILITIES/HEALTHCAREHEALTHCAREREGULATIONQUALITYIMPROVEMENT/Documents/HOSPITALList.pdf>.

Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

date of the discharge or suspension, and the person provides to the department documentation of program participation[.]

OAR 471-030-0126 (January 11, 2018) provides:

- (1) “Drug” has the meaning given in ORS 475.005(6);
- (2) “Documentation of program participation” means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program;
- (3) “Participation” means to be engaged in a course of treatment through a recognized drug, cannabis, or alcohol rehabilitation program;
- (4) “Recognized drug, cannabis, or alcohol rehabilitation program” means a program authorized and licensed by the State of Oregon, or authorized and licensed by another state.

The employer discharged claimant based on their belief that he took unauthorized breaks from work on multiple occasions in 2025, including on June 13, 2025. The employer reasonably expected their employees to work their entire shifts except for authorized breaks, and that claimant would not leave apprentices under his supervision to work alone at any time. Claimant understood these expectations. Claimant asserted at hearing that he was not absent from the worksite during his June 13, 2025 shift except to obtain parts for the job and take an authorized lunch break. Transcript at 13. However, claimant admitted to the employer that in recent days he had taken unauthorized breaks of up to an hour in his van because he was ill from the effects of prior alcohol use. Transcript at 16. The employer’s discovery of these breaks on June 13, 2025 constituted the proximate cause of claimant’s discharge.⁴

An absence that “occurred as the result of the use of alcohol . . . on a second or any subsequent occasion within a period of 12 months” is a disqualifying act under ORS 657.176(2)(g), unless claimant was participating in a recognized alcohol rehabilitation program at the time of the absence, or is so participating within ten days after the date of the discharge or suspension, and provides to the Department documentation of program participation. The parties did not dispute that claimant’s unauthorized breaks resulted from the use of alcohol and occurred on multiple occasions during the twelve months preceding his discharge. The order under review found that claimant was discharged on June 20, 2025, and provided documentation that he had participated in a recognized alcohol rehabilitation program thereafter. Order No. 25-UI-306444 at 2. However, the order concluded that because the inpatient portion of the program began on July 4, 2025, claimant’s participation did not begin within ten days of his discharge from work, and his absences during the unauthorized breaks were therefore a disqualifying act. Order No. 25-UI-306444 at 3. The record does not support this conclusion.

The record shows that claimant sought treatment for alcohol use disorder through Kaiser on June 13, 2025, the day he was suspended from work. Claimant’s provider recommended inpatient treatment to

⁴ See, e.g., *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

begin when space was available at their Brookside facility, and a course of outpatient treatment until that time. From June 13 through July 4, 2025, claimant attended several provider appointments to receive treatment and prepare for his inpatient stay. Claimant successfully participated in inpatient treatment at Brookside from July 4 through 27, 2025, and was discharged to outpatient treatment thereafter. A written statement from a Brookside representative, dated June 26, 2025 and containing their email signature, provided information regarding the rehabilitation program in which claimant was participating. Exhibit 2 at 11. Neither ORS 657.176(2)(g) nor OAR 471-030-0126 exclude from the definition of a “recognized” program one that provides a combination of outpatient and inpatient treatment. Claimant therefore provided acceptable documentation under the rule showing that he had participated in a recognized rehabilitation program from at least June 13 through July 27, 2025, including the day on which he was discharged from work. Accordingly, he was not discharged for a disqualifying act.

For these reasons, claimant was discharged, but not for misconduct or a disqualifying act, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-306444 is set aside, as outlined above.

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

DATE of Service: November 18, 2025

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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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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.