

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0633

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 23, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and denied benefits from May 18, 2025 to May 23, 2026 (decision # L0011934806). Claimant filed a timely request for hearing. On September 25, 2025, ALJ Micheletti conducted a hearing, and on October 7, 2025 issued Amended Order No. 25-UI-306138,¹ reversing decision # L0011934806 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On October 22, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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).

FINDINGS OF FACT: (1) Tigard Assembly of God Church employed claimant as a fourth grade teacher at their elementary school, most recently from August 28, 2023 until May 23, 2025.

(2) The employer maintained a policy that provided that employees “needed to call . . . or . . . be in communication with [their] supervisor about not coming into work” when taking a leave of absence. Transcript at 6.

(3) Claimant had contamination obsessive-compulsive disorder (OCD), a mental health condition that involved claimant having severe anxiety and fear of exposure to chemicals. Claimant was diagnosed

¹ Amended Order No. 25-UI-306138 modified Order No. 25-UI-305836 (which was issued October 3, 2025), to correct a clerical error in the “History of the Case” section of that order that incorrectly stated claimant had not participated in the hearing. Amended Order No. 25-UI-306138 at 1.

with the condition in 1998 and took prescribed medication to treat it. Claimant disclosed her contamination OCD diagnosis to the employer's principal when she was hired and explained to the principal her fear of chemicals being used around her classroom.

(4) On the morning of April 21, 2025, the employer had an exterminator spray pesticide at their school to address a problem with ants. Claimant had understood that an exterminator would be visiting the school at some point, but was not notified when and believed the exterminator would only be setting bait traps. Pesticide was sprayed around the perimeter of claimant's classroom. Claimant observed the exterminator spraying the pesticide, which triggered her contamination OCD and caused her to experience fear and anxiety.

(5) Claimant sent an email to the principal advising that it was unsafe to have the spraying done while students and staff were in the building, and that the spraying was causing her anxiety. Claimant asked permission to go home. The principal responded that the pesticide was supposed to dissipate in an hour and told claimant that she was not allowed to go home. Claimant had a headache and burning in her nose, but stayed the remainder of the day.

(6) On April 22 and 23, 2025, claimant called out sick from work. On April 23, 2025, claimant emailed the principal a letter stating that, due to her contamination OCD having been triggered by the exterminator spraying near claimant's classroom, claimant was going to take a medical leave of absence through the Oregon Family Leave Act from April 24, 2025 through the last day of her contract for that school year, June 11, 2025.

(7) The principal responded that claimant needed to apply for Paid Leave Oregon benefits, rather than take leave through the Oregon Family Leave Act, because the employer employed too few employees to be subject to the Oregon Family Leave Act. Other than this communication, the employer did not contact claimant while she was on leave.

(8) On May 9, 2025, the Department issued to the employer an administrative decision concluding that claimant had been denied Paid Leave Oregon benefits. *See Exhibit 1 at 1.* The employer received this administrative decision the day it was issued.

(9) Thereafter, rather than contact claimant to ask what her status was, or direct her to return to work, the employer simply "waited to hear back from [claimant] as to what her next step was going to be with . . . being denied the medical leave[.]" Transcript at 6. At that point, the employer's "expectation was that [claimant] would have reached out to [the employer] after the denial of her medical leave to inform [the employer] if she . . . was going to continue to stay . . . off the job." Transcript at 8. Claimant did not contact the employer to share what her intentions were regarding whether or when she would return to work.

(10) The Department issued the administrative decision denying claimant Paid Leave benefits because claimant did not submit necessary medical documentation. After the Paid Leave benefits were denied, claimant went to her doctor, who gave claimant a note approving claimant to take a period of medical leave from April 21, 2025 through June 6, 2025. The note mentioned that claimant was diagnosed with contamination OCD in 1998, that the April 21, 2025 incident had exacerbated the condition, and that the exacerbation lasted from April 21, 2025 to June 6, 2025.

(11) In early May 2025, while claimant was on leave, the employer discovered that some of the work of claimant's students had not been graded, in some cases dating back to January 2025. The discovery of the ungraded work led the employer to conclude that claimant had failed to perform job duties prior to taking leave.

(12) Some of the ungraded work was student work that claimant believed was unnecessary to grade. Claimant was also a fairly new teacher, and the employer's school was the only school at which she had ever taught. A week or two before taking leave, claimant had raised with the principal that keeping up with grading was a challenge. The principal assigned some aides to assist claimant with grading, but the aides had only just begun to help with the task at the time claimant went on leave.

(13) On May 23, 2025, the employer discharged claimant. The employer discharged claimant because, during the period of the leave, she had been absent and not reporting to work, and had not updated the employer about whether she intended to return to work. Another factor in the employer's decision to discharge claimant was the discovery of her students' ungraded work.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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). Absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for being absent and not reporting to work during her leave, and not updating the employer about whether she intended to return to work, particularly after the Department issued the May 9, 2025 administrative decision denying Paid Leave benefits. Another factor in the employer's decision to discharge claimant was the discovery of her students' ungraded work, which led the employer to conclude that claimant had failed to perform job duties prior to taking leave.

To the extent that the employer discharged claimant for being absent from work during the period of her leave, the discharge was not for misconduct. Claimant was absent from work beginning April 22, 2025, because the spraying of pesticide near claimant's classroom on April 21, 2025 triggered her contamination OCD condition, causing her severe anxiety. Absences due to illness or other physical or mental disabilities are not misconduct. Because claimant's absences were due to an illness or mental disability, claimant's contamination OCD, the absences were not misconduct.

To the extent that the employer discharged claimant for failing to communicate about her status during the leave period including, in particular, after the Department issued the May 9, 2025 administrative decision denying Paid Leave benefits, the employer did not meet their burden to prove that claimant violated the employer's expectations willfully or with wanton negligence.

At hearing, the principal testified that the employer maintained a policy providing that employees call or be in communication with their supervisor about whether they intend to return to work, when taking a leave of absence. Transcript at 6. However, the employer did not offer evidence as to how or when this expectation was ever conveyed to claimant, and therefore did not meet their burden to prove that claimant knew and understood this expectation. Claimant's April 23, 2025 communication made clear her intention to take medical leave through the last day of her contract for that school year, June 11, 2025. While the May 9, 2025 denial of Paid Leave benefits may have altered the circumstances of claimant's leave such that reaching out to the employer with a status update would have been appropriate, it is not evident that claimant knew or should have known that she was required to do so. After receiving the May 9, 2025 administrative decision denying Paid Leave benefits, the employer did not contact claimant for an update on her plans or to advise that claimant was expected to return to work. Instead, the employer simply waited to hear from claimant without initiating any communication, and then discharged claimant on May 23, 2025, after two weeks without hearing anything. The employer did not prove by a preponderance of the evidence that claimant knew or should have known that she was required to communicate with the employer during that period.

To the extent the employer discharged claimant for the ungraded student work they discovered while she was on leave, the employer also did not meet their burden to prove that claimant violated the employer's expectations willfully or with wanton negligence. At hearing, claimant testified that in the weeks before her leave, she had raised with the principal that keeping up with grading was a challenge, and the principal assigned some aides to assist with grading. Transcript at 27. The principal agreed that this had occurred, but testified that she was unaware of the amount of ungraded work. Transcript at 30. However, claimant testified, unrebutted, that some of the ungraded work was student work that she believed was unnecessary to grade. Transcript at 28-29. Claimant also testified that she was a fairly new teacher, and the employer's school was the only school at which she had ever taught. Transcript at 29.

On this record, the employer did not prove that the ungraded work was a willful violation, as there is no indication that claimant violated the employer's grading expectations purposefully. The employer also did not prove that claimant's failure to grade the work was wantonly negligent, as claimant's outreach for assistance suggests that she was not acting with indifference to the consequences. Further, claimant's relative lack of teaching experience suggests that the ungraded work may have been the product of inefficiency resulting from lack of job skills or experience, which is not misconduct.

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-306138 is affirmed.

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

DATE of Service: December 1, 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.

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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.

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