

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0641

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 31, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective June 29, 2025 (decision # L0012181210).¹ Claimant filed a timely request for hearing. On October 10, 2025, ALJ Griffith conducted a hearing, and on October 14, 2025 issued Order No. 25-UI-307128, reversing decision # L0012181210 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On October 24, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) ORTC, LLC employed claimant as a medical assistant at their opioid addiction treatment center in Grants Pass, Oregon from October 24, 2023 until July 1, 2025.

(2) The employer allowed employees one 30-minute lunch break during each shift. Claimant understood that her lunch breaks were not to exceed 30 minutes.

(3) Claimant had a young daughter. Also, during the spring and summer of 2025, claimant attended school. Claimant's parenting and school responsibilities caused her to be tired frequently.

¹ Decision # L0012181210 stated that claimant was denied benefits from July 13, 2025 to July 11, 2026. However, because decision # L0012181210 concluded that claimant was discharged for misconduct on July 1, 2025, the administrative decision should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 29, 2025, and until she earned four times her weekly benefit amount. See ORS 657.176.

(4) In late April 2025, claimant's daughter got head lice, which spread to claimant and got into her daughter's bedding. The lice caused claimant discomfort and itchiness that interfered with her sleep and negatively affected her mental health. Claimant used treatments on her daughter and herself to eliminate the lice, but the pests lingered in her home for a couple of months following late April 2025.

(5) The lice infestation caused sleeping difficulties that contributed to claimant failing to report to work on April 24, 2025 without calling in first, and ultimately calling out from work that day after her shift began. Claimant's supervisor gave claimant a disciplinary write-up for the April 24, 2025 incident. In the write-up, the employer listed several occasions in which claimant had allegedly violated the employer's attendance policies, and noted that additional violations could result in termination of claimant's employment.

(6) On June 30, 2025, claimant's shift began at 5:00 a.m. with her 30-minute lunch break scheduled for 9:15 a.m. That day, claimant was exhausted from her parenting responsibilities, lingering difficulties from the lice infestation, and her obligations at school. Claimant also felt stress at work because the employer's regional director was present at the workplace that day, and claimant and the regional director had had a tense working relationship.

(7) Claimant clocked out for her lunch break at 9:15 a.m. Claimant then went home and decided to take a short nap while there to relieve her exhaustion and stress. Claimant set an alarm for eleven minutes, intending to wake up when the alarm went off and return to work by 9:45 a.m., as required. However, when the eleven minutes elapsed, claimant slept through the alarm. After some time passed, claimant's supervisor called claimant, and claimant woke to the call. Claimant then "jumped in [her] car" and returned to work, clocking back in at 11:25 a.m. Transcript at 18.

(8) On July 1, 2025, the employer discharged claimant for violating their attendance policies, with the most recent violation being the June 30, 2025 incident where claimant took a lunch break that exceeded 30 minutes.

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).

The employer gave claimant a disciplinary write-up for the April 24, 2025 incident and in that write-up noted several alleged violations of the employer's attendance policies. However, the initial focus of the discharge analysis is the proximate cause of the discharge, which is the final incident without which the

discharge would not have occurred when it did. *See e.g. Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *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). Once the proximate cause of the discharge is identified, an assessment is made whether that conduct was a willful or wantonly negligent violation of the employer's expectations. If the final incident is determined to be a willful or wantonly negligent violation, prior incidents are analyzed to assess whether the final incident was an isolated instance of poor judgment. However, if the proximate cause of the discharge is not shown to be a willful or wantonly negligent violation, the discharge was not for misconduct and the analysis ends.

Here, the employer's witness testified that claimant was discharged because of her attendance violations, and that the June 30, 2025 incident was the final incident that prompted the July 1, 2025 discharge. Transcript at 14, 6. The June 30, 2025 incident where claimant took a lunch break that exceeded 30 minutes therefore was the proximate cause of the discharge.

The employer did not meet their burden to prove that claimant's conduct on June 30, 2025 was a willful or wantonly negligent violation of their expectations. Claimant did not intend to break the employer's rule requiring that the lunch break not exceed 30 minutes, but rather took a lunch break longer than 30 minutes because she took a nap during the break and inadvertently slept through her alarm. As such, her violation was not willful.

The employer also did not prove by a preponderance of the evidence that claimant violated the employer's rule with wanton negligence. It may have been imprudent for claimant to take a nap during the lunch break because the break was only 30 minutes long, and claimant had to drive from the workplace to home and back. However, claimant planned for the nap to be short and she set an alarm for eleven minutes, intending to wake up when the alarm went off and return to work by 9:45 a.m. as required. Claimant slept through the alarm because she was exhausted at the time because of her parenting and school responsibilities. Given that claimant set an alarm intending to return from lunch on time, and slept through the alarm because of exhaustion caused by demanding life circumstances, the record fails to show that claimant acted with indifference to the consequences of her actions. Because claimant did not act with indifference, the employer failed to show by a preponderance of the evidence that claimant's conduct on June 30, 2025 was a wantonly negligent violation of the employer's expectations.

For these reasons, the employer failed to prove that the June 30, 2025 final incident was a willful or wantonly negligence violation of their expectations. Accordingly, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-307128 is affirmed.

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

DATE of Service: December 2, 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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