

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0646**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 30, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0011481795). The employer filed a timely request for hearing. On September 30, 2025, ALJ Hall conducted a hearing, and on October 8, 2025, issued Order No. 25-UI-306419, affirming decision # L0011481795. On October 27, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the employer's argument in reaching this decision. Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her 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 claimant's argument that were based on the hearing record.

**FINDINGS OF FACT:** (1) Theodore R. Rask, DMD, Corp. employed claimant as an office manager at their dental clinic from May 5, 2017 until April 10, 2025.

(2) Beginning on January 14, 2025, claimant was on medical leave following the advice of her treating providers. Part of this was protected leave under Paid Leave Oregon, and claimant was projected to have exhausted all protected leave by April 5, 2025.

(3) On March 20, 2025, claimant texted the employer in response to an inquiry about her return date, "After speaking with my doctor it has been decided that I need more time. Therefore, I will be requesting another month of FMLA [protected leave]. My return date is May 5<sup>th</sup>. I'm sorry for the inconvenience." Exhibit 1 at 5.

(4) Claimant had an appointment to see a treating provider during the week of March 30 through April 5, 2025, and planned to ask for a letter at that appointment excusing her from work for a period beyond April 5, 2025. However, claimant's father died unexpectedly on March 31, 2025, and claimant therefore postponed the appointment to April 23, 2025. The provider was unwilling to write the letter until claimant attended that appointment.

(5) On approximately April 4, 2025, the employer texted claimant that she would exhaust all protected leave on April 5, 2025, and that they expected her to report for work on April 8, 2025. Claimant responded on April 6, 2025, writing, in part, "While I understand you have a business to run and you feel my absence isn't sustainable, returning prior to my provider releasing me will negate all the work I have done these past few months. . . . [Y]ou will have to make your decision based on what's best for your practice and staff." Exhibit 1 at 5.

(6) On April 10, 2025, the employer discharged claimant because she had failed to return to work on April 8, 2025, and notified her of this by text message and letter. The employer felt that claimant's extended absence from work had caused operational and financial difficulties for the business, and they were therefore unwilling to grant claimant additional leave after her protected leave was exhausted.

(7) On April 23, 2025, claimant attended the appointment with her treating provider, who wrote a letter the following day clearing her to return to work on May 5, 2025. Claimant did not forward the letter to the employer because she had already been discharged.

**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). Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because she did not return to work on April 8, 2025, after having exhausted all available protected leave. Claimant remained off work after the April 5, 2025 expiration of her protected leave based on the advice of her treating provider, who later cleared her to return to work on May 5, 2025. *See* Exhibit 3 at 1. The employer did not rebut claimant's evidence regarding her ability to work. Therefore, more likely than not, claimant was absent from work from April 8 through 10, 2025 due to illness or disability, which under OAR 471-030-0038(3)(b) is not misconduct.

The employer asserted at hearing that they expected claimant to provide “some documentation stating that . . . she would have a reason to not return on April 8th,” and that “[t]here was no communication regarding an actual . . . return date.” Transcript at 8. However, text messages submitted by the employer for the hearing show that claimant told them on March 20, 2025 that she would be medically unable to return to work until May 5, 2025, and reiterated on April 6, 2025 that she would not return to work until cleared by her provider to do so, without suggesting any change to the May 5, 2025 planned return date. Exhibit 1 at 5. Moreover, the record does not show that the employer told claimant that they expected her to obtain documentation from her treating provider excusing her from work from April 8 to May 5, 2025. Although claimant did not know or have reason to know of this expectation, she planned to obtain such documentation at a provider appointment during the week of April 5, 2025, but had to postpone the appointment due to the unexpected death of her father. The employer discharged claimant prior to the date of the rescheduled appointment. Under these circumstances, the employer has not shown that claimant willfully or with wanton negligence violated a reasonable employer expectation regarding maintaining communication or providing medical documentation about her absence. Accordingly, claimant was not discharged for misconduct.

For these reasons, 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-306419 is affirmed.

S. Serres and A. Steger-Bentz;  
D. Hettle, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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