

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0653

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 29, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective July 20, 2025 (decision # L0012606912).¹ Claimant filed a timely request for hearing. On October 24, 2025, ALJ Allen conducted a hearing and issued Order No. 25-UI-308391, affirming decision # L0012606912. On November 2, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer 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 claimant's reasonable control prevented her 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) Cascade Residential Care, Inc. employed claimant as the house manager at one of their residential facilities from September 10, 2024 through July 22, 2025. Before starting in September 2024, claimant had previously worked for the employer for a period of time until approximately January 2024.

(2) The employer maintained a policy which forbade employees from sleeping while on the job except between 12:00 a.m. and 6:00 a.m., when the house residents were asleep. Claimant understood this expectation.

¹ Decision # L0012606912 stated that claimant was denied benefits from July 20, 2025 to July 25, 2026. However, decision # L0012606912 should have said that claimant was disqualified from receiving benefits beginning Sunday, July 20, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) Claimant had attention-deficit hyperactivity disorder (ADHD) and obsessive-compulsive disorder (OCD). The symptoms of these conditions worsened when claimant experienced stressful circumstances.

(4) On June 11, 2025 and July 8, 2025, the employer discussed with claimant concerns about her performance. These concerns were not related to claimant sleeping on the job.

(5) On or around July 12, 2025, during the late afternoon, claimant was driving one of the residents home after a visit with the resident's family. This resident had a history of falsely reporting incidents that did not actually occur. During the drive, claimant mentioned to the resident that she "sometimes get[s] sleepy when [she drives] on the freeway." Transcript at 19. Claimant did not become drowsy or fall asleep during this drive. Nevertheless, at some point afterwards, the resident reported to the employer that claimant had fallen asleep at the wheel, only to be awoken when the vehicle's tires hit rumble strips on the side of the road.

(6) On July 16, 2025, employer's director received reports "from multiple sources" that they had observed claimant asleep at a table in the house's office that day during the "late morning." Transcript at 10. However, claimant was not asleep at work that day. The employer also later learned that claimant had authored one or more incident reports that day in which she had not been "completely coherent with her writing and the writing going up line [sic] in the page," with "sentences stopping in ... the middle of writing, [and] trailing off the paper[.]" Transcript at 9–10, 12.

(7) On July 22, 2025, the director, who had never himself witnessed claimant asleep at work, spoke to claimant about the allegations that she had been sleeping at work on July 16, 2025. During their discussion, claimant "[s]aid that she was tired, spoke to some issues going on outside of the home, [and] didn't believe that she had fallen asleep." Transcript at 12. Despite this, the director believed that the allegations were substantiated because of the reports from "multiple sources" and the irregularities on claimant's written incident reports. As such, the employer discharged claimant that day due to their belief that claimant had been sleeping at work on July 16, 2025.

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).

The employer discharged claimant due to their belief that she had been sleeping at work on July 16, 2025, in violation of their policy forbidding sleeping at work (other than during hours in which the

residents were asleep). The order under review concluded that claimant was discharged for misconduct, based on findings that claimant had, in fact, been sleeping at work on July 16, 2025. Order No. 25-UI-308391 at 2, 4. In support of this finding, the order under review explained that “[c]laimant’s only rebuttal to the employer’s evidence was to allege at hearing that the resident who complained [about claimant’s driving] had a history of false reporting and the employee she suspected of reporting her for sleeping at her desk was interested in taking her job.” Order No. 25-UI-308391 at 4. This explanation inaccurately presents the evidence in the record.

At hearing, claimant explicitly denied having been asleep at work on July 16, 2025. Transcript at 20. By contrast, the employer’s witness, their director, testified that he did not personally witness claimant sleeping at work. Transcript at 12. Thus, the employer’s testimony was entirely based on hearsay, while claimant’s was a first-hand account. In general, first-hand testimony is entitled to more weight than hearsay. Further, while the employer’s witness indicated that his belief in claimant having been asleep at work was supported by the irregularities in the incident reports she had filled out that day, claimant rebutted this in her testimony. Claimant explained that her mental health conditions had been worsened by “things going on outside of work,” and that she “probably was writing and got . . . distracted by something else” due to difficulties focusing, leading to the irregularities in her reports. Transcript at 21. Claimant’s testimony is a plausible explanation for what the employer noticed in the reports. In sum, claimant offered credible evidence to rebut both points of evidence that the employer used to support their assertion that claimant was asleep at work.

Based on the above, the evidence as to whether claimant was sleeping at work on July 16, 2025 is, at best, equally balanced, and the facts have been found in accordance with claimant’s account. The employer therefore has not met their burden to show that claimant was asleep at work as alleged. As such, because the preponderance of evidence does not show that claimant committed the policy violation for which the employer discharged her, claimant was discharged, but not for misconduct. Claimant therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.²

DECISION: Order No. 25-UI-308391 is set aside, as outlined above.

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

DATE of Service: December 9, 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

² Because the proximate cause of the employer’s decision to discharge claimant (i.e., the incident but for which the employer would not have discharged claimant) was not misconduct, it is not necessary to determine whether claimant willfully, or with wanton negligence, violated the employer’s policies on previous occasions, such as when she allegedly fell asleep while driving on or around July 12, 2025. Notably, however, the employer’s evidence regarding that incident was also hearsay.

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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