

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0656

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 30, 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 June 1, 2025 (decision # L0012168944).¹ Claimant filed a timely request for hearing. On October 22, 2025, ALJ Micheletti conducted a hearing, and on October 29, 2025, issued Order No. 25-UI-308725, reversing decision # L0012168944 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On November 3, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer included with their application for review eight pages of what appear to be records from their timekeeping system. To the extent that the employer intended these documents as a written argument, the employer did not state that they provided a copy of the argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, the documents 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) The Foundation of Southern Oregon employed claimant as a ranch attendant from approximately May 2024 through June 3, 2025. The employer was a nonprofit organization that provided opportunities, including horseback riding lessons, to special-needs children. Claimant's duties as a ranch attendant included assisting with classes and working with the ranch's horses. Claimant's schedule consisted of eight-hour shifts, the start and end times of which changed as the days grew longer or shorter throughout the year.

¹ Decision # L0012168944 stated that claimant was denied benefits from June 1, 2025 to May 30, 2026. However, decision # L0012168944 should have said that claimant was disqualified from receiving benefits beginning Sunday, June 1, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(2) The employer expected that their employees would report to work as scheduled. However, shortly after claimant started working for the employer, the assistant manager suggested to claimant that they allowed employees a short grace period of five minutes or so. The assistant manager meant, but did not tell claimant at the time, that occasionally being slightly late was acceptable. Claimant, however, did not understand this caveat at the time.

(3) From January 1, 2025 until the date of her discharge, claimant was late for work nearly 100 times, typically arriving between five and 15 minutes after her scheduled start time. Claimant's reasons for being late varied, but were often the result of trouble with her vehicle.

(4) On May 21, 2025, the employer issued claimant a warning about her repeated tardiness, and told her that any other late arrivals would be grounds for discharge. At that point, claimant understood that the employer expected her to arrive for work at her scheduled start time.

(5) On May 29, 2025, claimant was a minute late for work. The employer did not discharge claimant at that time.

(6) On June 2, 2025, claimant arrived for work at her scheduled start time of 9:30 a.m. When she clocked in, the time clock read 9:30 a.m. Despite this, the employer's records showed that claimant clocked in at 9:31 a.m. Claimant worked her full shift for the day.

(7) On June 3, 2025, when claimant arrived for work, the employer discharged her because they believed she had arrived for work one minute late on June 2, 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 because they believed she arrived at work one minute late on June 2, 2025. As a preliminary matter, the record shows that claimant was late for work almost every day, starting in January 2025, violating the employer's expectation that employees arrive on time. This included one late arrival in May 2025 after the employer clarified their attendance expectations with claimant. Despite this, however, the record shows that the employer discharged claimant when they did because of their belief that she was late for work on June 2, 2025. *See generally* June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division (the last occurrence of an attendance policy violation is considered the reason for the

discharge). *See also, 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).

Therefore, although the employer may have considered the totality of claimant's habitual lateness when they decided to discharge her, unemployment insurance benefit law requires that the misconduct analysis be focused on the final incident that led to the discharge. The final incident was claimant's alleged late arrival on June 2, 2025. Note that under OAR 471-030-0038(3)(b), willful or wantonly negligent violations of an employer's expectations that constitute isolated instances of poor judgment are not misconduct. Under OAR 471-030-0038(1)(d)(D), repeated acts or patterns of other willful or wantonly negligent behavior are excluded from the definition of an isolated instance of poor judgment. Thus, if claimant's conduct on June 2, 2025 was shown to be a willful or wantonly negligent violation of the employer's expectations, it would be necessary to consider claimant's prior instances of tardiness to determine if the final incident on June 2, 2025 was an isolated instance of poor judgment. However, the record does not show by a preponderance of evidence that claimant was late on June 2, 2025. Therefore, it is unnecessary to consider the prior instances of tardiness.

The parties offered conflicting accounts of claimant's arrival time on June 2, 2025. The employer asserted that claimant arrived at 9:31 a.m., one minute after her shift was scheduled to start. Audio Record at 6:42. By contrast, claimant asserted that she arrived and clocked in at 9:30 a.m. that day, and that the time clock read 9:30 a.m. when she clocked in. Audio Record at 12:55 to 13:15. Claimant also suggested that she had on several occasions noticed discrepancies in the time clock system, and that these discrepancies might have accounted for the employer's belief that she was late on June 2, 2025. Audio Record at 15:24 to 16:20. However, claimant's testimony lacked sufficient detail to show that those discrepancies caused the employer to believe claimant was late on June 2, 2025.

Neither party offered other evidence to corroborate their testimony about whether claimant was late for work on June 2, 2025. The evidence on that point is therefore equally balanced. As such, the employer has not met their burden in a discharge case to show by a preponderance of the evidence that their version of events is more accurate, and the facts on that point have been found in accordance with claimant's account. Because the record does not show by a preponderance of evidence that claimant was actually late for work on June 2, 2025, she was not discharged for a violation of the employer's expectations. Therefore, 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-308725 is affirmed.

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

DATE of Service: December 4, 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 باتباع 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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