

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0662

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 20, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective July 6, 2025 (decision # L0012518600).¹ Claimant filed a timely request for hearing. On October 16, 2025, ALJ Hall conducted a hearing, and on October 24, 2025, issued Order No. 25-UI-308382, reversing decision # L0012518600 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation. On November 5, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument because they 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).

FINDINGS OF FACT: (1) SAS Retail Merchandising LLC employed claimant as a retail reset merchandiser from February 21, 2024 until May 14, 2025.

(2) The employer had a written policy prohibiting "harassment [and] disrespectful conduct" including "[u]nwanted sexual advances or propositions (including repeated and unwelcome requests for dates)." Exhibit 1 at 5. The employer made an electronic copy of this policy available to claimant at hire, but she did not view it. Claimant nonetheless understood that the employer expected that their employees would not solicit others to go on a date or engage in sexual activity in exchange for money.

¹ Decision # L0012518600 stated that claimant was denied benefits from June 29, 2025 to June 27, 2026. However, as decision # L0012518600 concluded that the work separation occurred on July 7, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 6, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) At some point during the week of May 9, 2025, claimant spent her lunch break outside of work with her boyfriend, and they encountered a friend who asked claimant to find him someone to date. Claimant's boyfriend and the friend remained in a car in the parking lot of the store where claimant was working after claimant's break ended. When claimant returned to the store, she approached a coworker with whom she had little familiarity. Claimant said to the coworker, "Hey, you know, you're really pretty. . . Do you got a boyfriend?" and the coworker responded, "Why?" Transcript at 15. Claimant replied, "I was just wondering if you want to go on a double date with, you know, me and my friend. . . You don't need any money because he would pay for it." Transcript at 15. Claimant did not state or imply to the coworker that the coworker would be paid money for going on the date or engaging in sexual activity.

(4) Following this exchange, the coworker complained to the "team lead" that claimant had asked "if she wanted to hook up with a friend that was in the car outside and that he may give her money in exchange for that." Transcript at 7. The team lead called the supervisor to relay this complaint, and also stated to the supervisor that she, the team lead, overheard claimant's interaction with the coworker and corroborated the coworker's account. The supervisor relayed the complaint to the employer's human resources department.

(5) Following receipt of the complaint, a human resources representative spoke with claimant. During that conversation, claimant refuted some aspects of the coworker's and team lead's accounts, stating that she had asked the coworker if she had a boyfriend and if she wanted to go on a double date, and "that was all." Transcript at 17. Claimant denied telling the coworker that the friend might "[give] her money," and asserted that the shift lead had not been present to overhear the conversation at issue. Transcript at 17-18. Claimant admitted to the human resources representative that, upon reflection, "it probably wasn't right" to ask the coworker these questions, but stated that she did not consider her actions to constitute "sexual harassment." Transcript at 17-18.

(6) After interviewing claimant, the human resources representative gave a written statement to claimant's supervisor, stating in relevant part that claimant's statements during the interview "confirmed that the comments [alleged by the coworker and team lead] occurred and were not appropriate for the workplace," and that claimant "stated she was joking when she said [the friend] might give [the coworker] money." Exhibit 1 at 3.

(7) Claimant asked her supervisor if she could "explain" her version of the incident, but the supervisor replied, "No, it was really rude of you," and that it "was up to the [human resources department]" to handle the matter. Transcript at 19.

(8) On May 14, 2025, the employer discharged claimant based on their belief that she had solicited a coworker to go on a date or engage in sexual activity in exchange for money.

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 based on their belief that she had solicited a coworker to go on a date or engage in sexual activity with a friend in exchange for money. The employer reasonably expected that their employees would not solicit others to go on a date or engage in sexual activity in exchange for money, and claimant understood this expectation.

The employer’s only witness at hearing, claimant’s supervisor, was not present for the incident at issue. However, the supervisor testified that the team lead called her shortly after the incident, stating that claimant’s coworker had complained that claimant asked her “if she wanted to hook up with a friend that was in the car outside and that he may give her money in exchange for that.” Transcript at 7. The witness also testified that during the call the team lead said she overheard this conversation between claimant and the coworker. Transcript at 8. A human resources representative investigated the matter and provided a written summary of their interview with claimant, stating in relevant part that claimant’s statements during the interview “confirmed that the comments [alleged by the coworker and team lead] occurred and were not appropriate for the workplace,” and that claimant “stated she was joking when she said [the friend] might give [the coworker] money.” Exhibit 1 at 3. The supervisor also testified that she asked claimant for her version of the incident, and claimant “did confirm to me as well that she had said it, but she said that she was joking when she said [the friend] might give [the coworker] money.” Transcript at 11.

In contrast to this evidence, claimant testified that she said to the coworker, “Hey, you know, you’re really pretty. . . Do you got a boyfriend?” and the coworker responded, “Why?” Transcript at 15. Claimant replied, “I was just wondering if you want to go on a double date with, you know, me and my friend. . . You don’t need any money because he would pay for it.” Transcript at 15. Claimant denied “soliciting [the coworker] and saying [the friend] would give [the coworker] money,” asserting that she “wouldn’t do that at a work situation.” Transcript at 15. Claimant further testified that the team lead “was nowhere around at all” during the incident, implying that the team lead could not have overheard the conversation. Transcript at 15. Regarding the interview with the human resources representative, claimant testified that she denied the accusations against her and explained to the representative, “I just wanted to see if, you know, she had a boyfriend and if she did[n’t], if she wanted to go on a double date, that was all.” Transcript at 17. Claimant also testified she admitted to the representative that in retrospect, she “shouldn’t be asking anybody if they wanted to go on a double date,” and that what she had said to the coworker “probably wasn’t right.” Transcript at 17. Claimant added that she never said to the representative that the friend would give the coworker money. Transcript at 17. Claimant also rebutted the supervisor’s testimony that she asked claimant for her version of the incident and claimant gave an account that “confirm[ed]” the allegations against her but said that she “was joking when she said [the friend] might give [the coworker] money.” Claimant testified that she “tried to talk to [the supervisor] about it, and she wouldn’t give me the time of the day because she was like, ‘No, it was

really rude of you,”” and said that the matter was in the hands of the human resources department. Transcript at 11, 19.

In weighing this conflicting evidence, claimant’s first-hand account of the incident is entitled to greater weight than the hearsay accounts of the coworker and team lead. Moreover, claimant’s first-hand account of what she said to the human resources representative is entitled to greater weight than the representative’s hearsay account of the conversation. Claimant’s testimony that she was never allowed to give her account of the incident to her supervisor is no more than equally balanced with the supervisor’s testimony that she asked claimant for her account and claimant admitted to the allegations against her with the caveat that she had been “joking” about the offer of money. Transcript at 11. Under this weighting, the two hearsay accounts from purported eyewitnesses to the incident and two accounts, including one first-hand account, from purported witnesses to claimant later admitting to the allegations against her, are no more than equally balanced with claimant’s testimony regarding the incident and her subsequent statements made in the course of the investigation. As the employer bears the burden of proof by a preponderance of the evidence, they have not met this burden, and the facts have been found in accordance with claimant’s testimony.

Therefore, the record shows that claimant did not solicit the coworker to go on a date or engage in sexual activity with her friend in exchange for money. While claimant made mention during the interaction that the coworker would not “need any money” for the date “because [the friend] would pay for it,” it can reasonably be inferred that claimant was referring only to covering the costs of food or activities jointly incurred by them during the date. Transcript at 15. Further, while claimant did ask the coworker if she had a boyfriend and whether she wanted to go on a double date, she asked this only a single time, and did not have reason to know that the questions would be unwanted or unwelcome. As such, claimant did not violate the terms of the employer’s written policy prohibiting “harassment [and] disrespectful conduct.” Accordingly, the employer has not met their burden to show by a preponderance of the evidence that claimant violated policy, and she was therefore 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-308382 is affirmed.

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

DATE of Service: December 10, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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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