EO: Intrastate
BYE: 30-May-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

423
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0677

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 7, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was fired by the employer for misconduct and was denied benefits effective May 25, 2025 (decision # L0012250574).[1] Claimant filed a timely request for hearing. On October 9, 2025, ALJ Monroe conducted a hearing, and on November 5, 2025 issued Order No. 25-UI-309661, reversing decision # L0012250574 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On November 10, 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 the employer's 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) Century Dental, LLC employed claimant as a dental assistant from July 2020 until May 29, 2025.

(2) By policy, the employer provided free or discounted services to employees and their "direct family members," defined as spouses, registered domestic partners, and children. Transcript at 7–8. The policy excluded the provision of these benefits to other family members, unless pre-approved by the employer. The employer also required documentation of all services or benefits provided to their patients. Claimant was aware of and understood these policies.

[1] Decision # L0012250574 stated that claimant was denied benefits from May 25, 2025 to May 30, 2026. However, decision # L0012250574 should have stated that claimant was disqualified from receiving benefits beginning May 25, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) The employer sometimes offered "charity" dental services to certain populations, such as veterans. Transcript at 19–20.

(4) In or around April 2025, claimant's brother-in-law made an appointment for a cleaning and examination at the employer's clinic. During the brother-in-law's appointment, it was recommended that he start using a mouth guard at night. At that time, claimant took digital impressions of her brother-in-law's teeth and placed an order for the mouth guard. The brother-in-law paid for the exam and cleaning, but did not pay for the mouth guard at that point, as the employer typically accepted payment for such devices when they were delivered to the patient. Nevertheless, the employer incurred some costs relating to the ordering of the mouth guard, such as laboratory fees and wages for staff time.

(5) Claimant knew that her brother-in-law was not able to afford the device on his own, and intended to ask the employer if they could offer him the mouthguard at a discount or for free. If they declined claimant's request, claimant intended to pay for the device herself. Despite her intent to speak to the employer about this, however, claimant did not do so immediately, as the office was frequently busy. Claimant instead "put aside" the matter to handle later. Transcript at 24. On May 27, 2025, claimant raised the matter with her supervisor, explained what she intended to do, and asked her supervisor not to speak to the employer about the matter. Claimant intended to speak to the employer about the matter soon. However, the supervisor, uncomfortable with claimant's actions, reported the matter to the employer first.

(6) On May 28, 2025, the practice owners and the employer's business manager spoke to claimant about the matter of her brother-in-law's mouth guard. During that conversation, claimant explained that she had intended to ask the employer for a free or discounted mouthguard for her brother-in-law, or that she would otherwise pay for it herself. Nevertheless, because of the amount of time that had passed between the initial appointment and the meeting, and claimant's request to the supervisor to not share what claimant told her with the employer, the employer did not believe claimant's explanation. Instead, the employer came to believe that claimant had intended to give her brother-in-law the mouthguard free of charge without getting approval from the employer. Based on this, the employer felt there was a "loss of trust" in claimant, and that her actions constituted "theft." Transcript at 12, 8.

(7) On May 29, 2025, the employer discharged claimant because of her conduct regarding the ordering of her brother-in-law's mouth guard. The employer had never previously disciplined claimant or issued her any warnings regarding any other conduct during her time working for them.

(8) In or around early June 2025, after the employer had discharged claimant, the mouth guard that claimant had ordered for her brother-in-law arrived at the employer's office.

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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, acts that violate the law, that are tantamount to unlawful conduct, or that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

The employer discharged claimant because of her conduct regarding the ordering of her brother-in-law's mouth guard, which they felt was "theft" and caused them to lose trust in her. The employer has not met their burden to show that claimant's actions constituted misconduct.

In brief, claimant's conduct that led the employer to discharge her consisted of her having taken scans and placing an order for a mouth guard for her brother-in-law with the intention of either requesting that the employer offer the device to the patient free or at a discount, or else paying for the device herself, but without first obtaining permission from the employer to do so. It is debatable as to whether claimant's conduct here actually violated the employer's policy regarding the provision of free or discounted services to someone other than a "direct family member." The brother-in-law did not pay for the device at the time that claimant took the scans, but the record shows that payment was not expected for such devices until delivered to the patient. Thus, claimant's conduct during her brother-in-law's appointment likely did not, itself, violate the employer's policy.[2]

Because claimant intended to request an alternate payment arrangement for a non-"direct" family member, but failed to make this request prior to her brother-in-law's appointment, claimant likely violated the employer's expectation that she obtain pre-approval before providing what she intended to be free or reduced-cost services to him. Even assuming this to be the case, however, the record does not show that this constituted misconduct. The record shows that claimant was aware of the employer's expectations in this regard, and it is not clear why she failed to seek permission from the employer before providing services to her brother-in-law in this manner. Given that the delay in explaining her situation to the employer was apparently caused by the overall busyness of the office, it can be reasonably inferred that claimant did not have time to seek permission from the employer, during her brother-in-law's appointment, prior to taking the scans and ordering the mouth guard. Even so, it stands to reason that claimant could have waited to pursue these actions until she had a chance to speak to the

[2] The employer's witness also suggested at hearing that the brother-in-law's scan occurred at a separate appointment from his exam and cleaning, and that no such records of this second appointment existed because it was "off the books." Transcript at 7. By contrast, claimant testified that her brother-in-law only came to the clinic for a single appointment, at which all of these services were rendered. Transcript at 22–23. Neither party offered corroborating evidence to support these assertions. As such, the evidence on this point is, at best, equally balanced, and the employer therefore has not met their burden of proof to show that this second "off the books" appointment occurred. Thus, the record does not show that claimant violated the employer's requirement that all services or benefits rendered to patients be documented.

employer, even if doing so required her brother-in-law to return for a separate visit. Therefore, claimant's actions were the result of at least ordinary negligence.

Even if claimant's failure to seek permission from the employer before proceeding with the scans and ordering the mouth guard was wantonly negligent, however, it was, at worst, an isolated instance of poor judgment. First, the record shows that the employer had never previously disciplined claimant or issued her any warnings regarding any other conduct during her time working for them. The conduct therefore was isolated.

Further, claimant's conduct did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. While it is clear from the record that claimant's conduct breached the employer's trust, the employer has not shown by a preponderance of the evidence that it was an *irreparable* breach of their trust. *See Callaway v. Employment Dept.*, 225 Or App 650, 202 P3d 196 (2009) (a determination of whether a claimant's conduct caused a breach of trust is objective, not subjective, and the employer cannot unilaterally announce a breach of trust if a reasonable employer in the same situation would not); *see accord Isayeva v. Employment Dept*., 266 Or App 806, 340 P3d 82 (2014). Here, claimant had worked for the employer for nearly five years, and the record does not show that the employer ever had reason to question her honesty or integrity prior to the events that led to her discharge. While claimant's failure to either seek permission before providing the services to her brother-in-law, or to speak to the employer about it in a timely manner after doing so, understandably caused the employer to be suspicious of claimant's motives, the surrounding circumstances do not objectively show that a reasonable employer would have determined that they could no longer trust claimant.

Notably, the employer learned about claimant's actions from claimant's supervisor, to whom claimant had explained her actions, including her intentions regarding approaching the employer about a payment arrangement. Even in light of the fact that claimant asked the supervisor not to share what she told her with the employer, it still stands to reason that claimant would not have said what she did to the supervisor if she did not intend to ensure either that the device was paid for or that the employer granted a waiver of payment for it. Further, the record shows that the mouth guard arrived at the employer's clinic shortly after they discharged claimant. This suggests that claimant's decision to disclose her actions to her supervisor when she did was motivated by the device's imminent arrival, and claimant's resulting recognition that she would finally have to make the request of the employer.[3] Thus, on balance, claimant's conduct did not objectively create an irreparable breach of trust in the employment relationship.

Finally, claimant's conduct did not otherwise make a continued employment relationship impossible, as it was not likely to reoccur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. Claimant's conduct therefore did not exceed mere poor judgment. As such, claimant's conduct was, at worst, an isolated instance of poor judgment, which is not misconduct.

[3] Given the device's arrival after claimant's discharge, it is possible that the employer was not aware of its imminent arrival at the time they discharged claimant. However, it is reasonable to infer that the employer could have, if they had so chosen, made an inquiry with the relevant vendors to determine when the device was estimated to arrive. Therefore, even if the employer did not know about this fact prior to discharging claimant, they more likely than not *could* have considered the timing of the device's arrival when evaluating claimant's explanation for her actions.

For the above reasons, claimant was discharged, but not for misconduct, and therefore is not disqualified from receiving unemployment insurance benefits based on the discharge.

DECISION: Order No. 25-UI-309661 is affirmed.

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

DATE of Service: December 17, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
Email: *appealsboard@employ.oregon.gov*
Website: *www.Oregon.gov/employ/pages/employment-appeals-board.aspx*