EO: Intrastate
BYE: 30-May-2026

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

053
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0678

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 May 18, 2025 (decision # L0012127514). Claimant filed a timely request for hearing. On October 29, 2025, ALJ Goodrich conducted a hearing, and on November 6, 2025 issued Order No. 25-UI-309744, reversing decision # L0012127514 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On November 10, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Interpath Laboratory, Inc. employed claimant as a phlebotomist processor at the employer's medical laboratory from July 9, 2021 through May 22, 2025.

(2) In an effort to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the employer maintained a policy which required their employees to obtain a signed release of information (ROI) agreement from a patient before disclosing that patient's protected medical information to a third party. Claimant generally understood this policy, including that she generally should not share test results over the phone because she could not verify the identity of a person calling to request such results. Nevertheless, callers to the laboratory would regularly call claimant to ask if the test results they were waiting on were available. Upon verifying the caller's date of birth, claimant would confirm with the callers whether or not the test results were available and, if they were, would direct the caller to visit the laboratory in person, present a photo ID, and then receive their results. Claimant understood this practice to be permitted under the employer's HIPAA policy.

(3) On or around May 5, 2025, claimant spoke to her significant other, who was at the time incarcerated at a correctional facility that contracted with the employer for laboratory services. Claimant's significant other was suspected to have a methicillin-resistant Staphylococcus aureus (MRSA) infection, for which he had already received two inconclusive test results, and was at that point waiting for the results of a third test. During the call, claimant's significant other asked her for the status of the third MRSA test,

and gave her permission to look up the results. When claimant did so, she saw that the results were not yet available, and told her significant other the same.

(4) Claimant did not believe that the information she shared with her significant other about his test results violated the employer's HIPAA policy because she did not actually share test results with him over the phone; and because, as she knew him personally, she had no concern about verifying his identity.

(5) Claimant's call with her significant other about his test results status was recorded. Upon review of the call, a report was made to the employer, who subsequently investigated the matter to determine whether claimant's actions during that call had violated their HIPAA policy.

(6) On May 22, 2025, the employer discharged claimant because they believed that she had violated their HIPAA policy during the call with her significant other. Claimant had not previously violated any of the employer's policies or expectations during the course of her employment, nor had the employer ever disciplined her for any alleged or actual violations.

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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because they believed that she had violated their HIPAA policy during the call with her significant other on or around May 5, 2025, when she disclosed to him that his awaited test results were not yet ready. Moreover, the employer has not shown by a preponderance of the evidence that claimant's actions violated their HIPAA policy. Accordingly, the employer has not met their burden to show that this constituted misconduct.

At hearing, the employer's witness testified regarding that policy, "We have to sign a consent to share information. Like even with, for patients, if we give a family member information, they have to sign a release form for us to do so." Transcript at 9. She also explained that claimant's alleged violation of the HIPAA policy was "[s]haring. We're not supposed to share information over the phone. The patient has to come in and we have to see their ID to be able to provide that proof of identification, otherwise a

release form." Transcript at 27. The employer's witness did not draw a clear distinction between releasing information to a patient versus a third party, or between disclosing the status of test result availability versus the test results themselves, and it did not appear that she read any portion of the policy into the record verbatim. By contrast, claimant testified that she understood the HIPAA policy to require a signed ROI form in order to provide test results to someone *other than the patient*. Transcript at 23. She also testified that she understood that she should not share test results over the phone because she could not verify a caller's identity in that manner. Transcript at 25.

Neither party offered corroborating evidence, such as a written copy of the employer's policy, into the record. Therefore, the evidence as to what the policy actually required is, at best, equally balanced. Thus, to the extent that the parties' accounts of what the policy required differed, the employer has not shown by a preponderance of the evidence that their version was more accurate, and the facts have therefore been found in accordance with claimant's account. Based on claimant's account of what the HIPAA policy required, her actions during the call did not violate that policy because she did not actually disclose the results of her significant other's MRSA test (as the test results were not even available), and the information she did share was with the patient himself as opposed to a third party. Because claimant's disclosure of the status of her significant other's test results to the patient himself was not a violation of the employer's HIPAA policy, it could not be a willful or wantonly negligent violation of that policy.

Even if the employer expected claimant not to share the type of information she shared, they did not meet their burden to show that her violation of any such expectation was done willfully or with wanton negligence. Because the actual wording of the policy was not articulated in the record and the parties offered differing accounts of what they understood the policy to be, the record does not show that claimant either knew or had reason to know of the employer's more-restrictive expectations, such that claimant's violation of these expectations would have been wantonly negligent.

Additionally, claimant had reason to believe that she was acting in accordance with the employer's policy or expectations because she had regularly made the same type of disclosures (i.e., whether or not test results were ready) to other patients who called the employer's facility regarding their own test results. Likewise, claimant's understanding of the policy's prohibition on sharing test results over the phone was based, at least in part, on concerns about the inability to verify a caller's identity over the phone. Because claimant had no such concern, or even reason for such concern, when talking with a patient she knew intimately, it was reasonable for claimant to conclude that the employer would permit her to disclose information about that patient's test results status to that patient in the manner that she did.[1] The record does not show that the employer ever corrected claimant on either of these points over the course of her nearly four-year tenure with them. As such, even if claimant's conduct violated the employer's expectations, the violation was, at worst, a good faith error, which is not misconduct.

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

DECISION: Order No. 25-UI-309744 is affirmed.

[1] Furthermore, if the employer required patients to report to their facility in person and present a photo ID before receiving their own test results, it is not clear how claimant's significant other could have done so while incarcerated.

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

DATE of Service: December 12, 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*