

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0679

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 11, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective May 25, 2025 (decision # L0012298979). Claimant filed a timely request for hearing. On October 16, 2025, ALJ Nyberg conducted a hearing, and on October 30, 2025 issued Order No. 25-UI-309038, affirming decision # L0012298979. On November 11, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision.

FINDINGS OF FACT: (1) Habitat for Humanity employed claimant as a home ownership program coordinator until May 29, 2025.

(2) On December 9, 2024, claimant began a period of protected leave for medical reasons. When that protected leave was exhausted in March 2025, the employer allowed claimant to use a combination of accrued paid leave and unpaid leave to remain off work, initially through May 7, 2025. Claimant was dissatisfied with the employer's handling of the transition from protected to unprotected leave in March 2025, as she considered the employer's request for information about why further leave was needed and treating it as a discretionary matter as interfering with her "rights. . . medical privacy. . . [and] legal protections." Exhibit 1 at 11.

(3) At some point prior to March 31, 2025, claimant said something that the employer interpreted as relaying a complaint from one of her homebuyer clients regarding racial discrimination in the employer's housing practices. In response, the employer hired a law firm to conduct an independent investigation into the complaint. On March 31, 2025, the attorney conducting the investigation emailed claimant, seeking to interview her as a "potential witness." Exhibit 1 at 34. At that time, claimant was not suspected of any wrongdoing. Claimant did not immediately agree to be interviewed.

(4) On April 8, 2025, the attorney emailed claimant stating that she had spoken with the homebuyer client to whom the alleged complaint had been attributed. In the email, the attorney stated that the homebuyer was “not concerned about race discrimination,” but complained that claimant had contacted them after learning of the investigation and they were “feeling harassed” by claimant and concerned about “retaliation” due to the investigation being initiated. Exhibit 1 at 26. Claimant was directed not to contact the homebuyer client again. The scope of the investigation was broadened to include claimant’s contacts with the homebuyer client during the investigation, and the employer’s “leave [and] disability policies.” Exhibit 1 at 33.

(5) On May 8, 2025, claimant met with the employer but refused to resume working while the investigation remained pending. A new date was set for claimant to resume working of May 15, 2025. However, on May 15, 2025, claimant again refused to resume working until the investigation was concluded. Based on this refusal to work, the employer placed claimant on unpaid administrative leave until the investigation was concluded.

(6) On May 19, 2025, the attorney emailed claimant, stating that she intended to conclude her review of the evidence on May 22, 2025, and that she was still willing to interview claimant before concluding the investigation. Claimant did not agree to an interview or provide information in the investigation.

(7) On May 27, 2025, the attorney emailed claimant the results of the investigation, which were that there had been no policy violations involving “race discrimination in employment or housing practices,” but that the “client’s report of harassment was credible.” Exhibit 1 at 33. Although the attorney deemed claimant’s conduct in that regard “inappropriate,” she did not consider it a “policy violation,” and recommended that claimant not be disciplined, though she stated the situation “may call for non-disciplinary education and coaching.” Exhibit 1 at 33. The employer accepted these findings and did not intend to discipline claimant. Claimant was directed to return to work on May 29, 2025.

(8) On May 29, 2025, claimant used the employer’s email and video conferencing systems to communicate with the employer’s staff that she did not intend to resume her work duties based on what she felt were “false allegations” that had been raised in the investigation. Transcript at 27. Claimant refused to clock in for work or log into the employer’s computer systems as necessary to complete her work, despite the employer directing her to do so. The employer therefore discharged claimant on May 29, 2025.

CONCLUSIONS AND REASONS: Claimant was discharged 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 she refused to clock in or perform work tasks on May 29, 2025, due to her disagreement with the conduct and conclusions of an investigation. The employer expected claimant to resume working on May 29, 2025, after she had been granted various forms of paid and unpaid leave for more than six months, and an investigation in which she was involved had concluded without imposition of discipline. Claimant did not rebut the employer's assertion that she willfully refused to resume working on May 29, 2025. *See* Transcript at 27-28.

At hearing, claimant suggested that she was justified in refusing to work because the investigation and its conclusions were "made up and fake." Transcript at 23. Claimant cited the scope of the investigation expanding to include her allegedly "harassing" the homebuyer client around whom the investigation originally centered, and the timing of the investigation's initiation shortly after she exhausted her entitlement to protected leave in March 2025, as examples of how the investigation was improper. Transcript at 25-26, 28, 33. However, after claimant had been told on May 27, 2025 that the investigation determined she had violated no policy and should not be disciplined, it no longer had any potential to impact her employment, even if claimant still had misgivings about how it had been conducted. The employer's expectation that claimant resume her normal work tasks on May 29, 2025 was therefore a standard of behavior an employer has the right to expect of an employee. Accordingly, claimant willfully violated a reasonable employer expectation.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. Claimant's refusal to resume her normal work tasks was ongoing when she was discharged, and therefore not a single or infrequent occurrence. Moreover, as claimant's grievances were based on past events, it is unclear from the record under what conditions, if any, she would have resumed working. Given the lack of such evidence in the record, the indefinite nature of claimant's refusal to work made a continued employment relationship impossible, as the employer could not reasonably have continued to employ her while she refused to perform any of her duties. Accordingly, claimant's refusal to work was not an isolated instance of poor judgment, and constituted misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective May 25, 2025.

DECISION: Order No. 25-UI-309038 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.

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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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