

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0732

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 10, 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 May 4, 2025 (decision # L0011697283).¹ Claimant filed a timely request for hearing. On November 4, 2025, ALJ Goodrich conducted a hearing, and on November 12, 2025, issued Order No. 25-UI-310273, reversing decision # L0011697283 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 25, 2025, the employer filed an application for review of Order No. 25-UI-310273 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lowe’s Home Centers, LLC employed claimant at one of their distribution centers, most recently from March 21, 2024 until May 6, 2025.

(2) The employer had a policy referred to as “freeze the scene,” under which the employer expected employees to stop what they were doing and immediately notify their supervisor if they encountered “safety incidents.” Transcript at 8, 11. The employer considered injuries, or mishandling of product or equipment that could potentially cause damage or injury, as “safety incidents” covered by the policy. Claimant understood the policy to this extent.

(3) On April 9, 2025, management became aware of a safety incident in which product that had been improperly stacked had partially fallen over into another stack of product. Claimant had not been involved in stacking the product or discovering the incident. A supervisor directed claimant to rectify the situation and told him that he would be assisted by another supervisor, but the other supervisor did not

¹ Decision # L0011697283 stated that claimant was denied benefits from May 4, 2025 to May 2, 2026. However, decision # L0011697283 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 4, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

appear, and claimant undertook this work alone. After claimant began unstacking the product, some of it began to fall forward on its own, and claimant controlled the falling product such that it landed, undamaged, in an aisle. Claimant did not “freeze the scene” and report the fallen product to a supervisor because management was already aware of the unsafe condition of the stacked product and had assigned claimant to address the situation. Claimant moved the fallen product out of the aisle and began stacking it properly, at which point he was being observed by two supervisors, who did not immediately correct him or otherwise intervene.

(4) On April 17, 2025, claimant was issued a written warning based on the employer’s belief that claimant had violated their “freeze the scene” policy on April 9, 2025, by failing to stop work and report that more of the stacked product had fallen while he was attending to the scene.

(5) On May 1, 2025, claimant was manually loading large, heavy products into a trailer, when a product he was holding began to slide out of his grip. As claimant repositioned himself to prevent the product from falling, he “tweaked” his back and momentarily experienced a “kind of intense” pain. Transcript at 23, 25. Claimant set the product down and stretched for “a couple of seconds,” after which he believed the pain had been “a temporary thing.” Transcript at 23. Claimant resumed loading trailers using lifting equipment, but when he attempted to manually lift product again, he again experienced back pain. Claimant concluded at that point that he had been injured, and contacted his supervisor. Less than five minutes had elapsed between when claimant “tweaked” his back and when he reported to his supervisor that he had been injured.

(6) On May 6, 2025, the employer discharged claimant because they believed he had violated policy on May 1, 2025 by failing to stop working and report an injury immediately after he “tweaked” his back.

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).

The employer discharged claimant based on their belief that he had violated their “freeze the scene” policy on May 1, 2025, by not immediately reporting an injury.² Under that policy, the employer

² Although the employer alleged that claimant had also violated the policy on April 9, 2025, he received a warning for that incident, and it was not the proximate cause of his discharge. The discharge analysis initially focuses on the proximate cause of the discharge, which is generally the last incident of misconduct before the discharge. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012.

expected employees to stop what they were doing and immediately notify their supervisor if they encountered “safety incidents,” including injuries. Transcript at 11. The text of the policy is not in the record, and the parties testified to differing understandings of what constituted an “injury” that would trigger application of the policy. The distribution center’s operations manager testified that the employer considered injuries or potential injuries as minor as a “paper cut” to fall within the policy. Transcript at 40. In contrast, claimant testified that a “simple injury such as dropping a pallet on your foot or getting a splinter [o]r bumping your shoulder or things like that . . . were never . . . communicated as being something that you would ‘freeze a scene’ for type thing.” Transcript at 29. Claimant explained that while the employer expected those types of injuries to be promptly reported, as opposed to waiting until the end of the workday or later, the expectation did not involve “immediately” reporting trivial injuries. Transcript at 29.

Claimant did not dispute that he continued to work for up to five minutes after he “tweaked” his back before attempting to report that he was injured. In describing what he meant by “tweaked,” claimant explained that he had momentarily experienced a “kind of intense” pain while lifting a product, and suggested that the pain subsided after a few seconds of stretching, allowing him to immediately resume working. Transcript at 25. Less than five minutes later, while attempting to lift another product, claimant again experienced pain and at that point concluded that he was injured. Claimant then immediately stopped working and reported the incident to his supervisor. Claimant testified that he did not immediately stop working and report that he had been injured at the time he “tweaked” his back because it “wouldn’t have been in my . . . consideration something that you would freeze a scene for[.]” Transcript at 30.

The conflicting accounts of what type of injury or potential injury triggered application of the “freeze the scene” policy are no more than equally balanced. The employer has therefore failed to show by a preponderance of the evidence that claimant knew or should have known that having “tweaked” his back was considered a reportable injury under the policy, and that by not immediately stopping work and reporting it, his failure to act would likely result in a policy violation. Furthermore, after realizing within five minutes that the back pain was affecting him more than just momentarily, claimant immediately stopped working and reported being injured. This demonstrated that claimant was not indifferent to the consequences of his actions, or the employer’s interests. Therefore, the employer has not shown that claimant willfully or with wanton negligence violated their policy by failing to immediately report that he had “tweaked” his back. Accordingly, claimant was 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-310273 is affirmed.

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

DATE of Service: December 31, 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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