

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0734

*Reversed
No Disqualification*

PROCEDURAL HISTORY: On September 4, 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 13, 2025 (decision # L0012655859).¹ Claimant filed a timely request for hearing. On November 5, 2025, ALJ Murray conducted a hearing, and on November 12, 2025, issued Order No. 25-UI-310190, affirming decision # L0012655859. On November 25, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1) (August 1, 2004). EAB did not consider claimant's written argument because he did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Dominos employed claimant as a delivery driver from March 29, 2024, until July 15, 2025.

(2) The employer had a written policy that prohibited employees from engaging in "harassment and violence." Transcript at 16. Claimant was provided access to a copy of the policy at hire, and signed an acknowledgement to that effect.

(3) By mid-July 2025, the employer had become dissatisfied with various aspects of claimant's performance and behavior. The employer's concerns were based on beliefs that on several occasions,

¹ Decision # L0012655859 stated that claimant was denied benefits from July 13, 2025 to July 18, 2026. However, decision # L0012655859 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 13, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

claimant had been confrontational and aggressive toward coworkers and management while using foul language; that he had exceeded the speed limit while making deliveries, leading to a confrontation with a customer and a police interaction; and that he had made a comment disparaging another employee's religion. Several of these incidents were alleged to have occurred between July 1 and 14, 2025. When presented with any written warning regarding this alleged behavior, claimant disclaimed responsibility and refused to sign it.

(4) On July 14, 2025, claimant asked the store manager for money with which to provide change to delivery customers, which the employer typically provided. The manager "aggressively approached [claimant], screaming," and said, "Stop being a Jew." Exhibit 2 at 1. In response, claimant "threw an empty money bag by [his own] feet but immediately picked it back up." Exhibit 2 at 1. Claimant did not use foul language during the exchange. The manager asked claimant to leave for the day, and when claimant asked her if he was being discharged, she responded that he was not, and that he should report for work as scheduled the following day.

(5) Immediately following this incident, claimant left a voicemail for the employer's district manager, complaining about the store manager and requesting a transfer to a different store. At the same time, the store manager reported to upper management that before being told to leave work for the day, claimant had begun "expressing his frustrations loudly" at the manager while waiting for her to assign deliveries, "threw a bag of money towards the manager on the floor and yelled. . . 'How the fuck am I supposed to make money?'" Transcript at 7. Based on the manager's report, the employer decided to discharge claimant.

(6) On July 15, 2025, claimant spoke with the employer's chief operations officer (COO) about the previous day's incident, but did not corroborate the manager's account, and did not apologize for his conduct because he believed he had done nothing wrong. When claimant reported for work that day, he was discharged based on the store manager's report from the previous day.

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 the store manager's report that claimant had "[thrown] a bag of money towards [her]" while yelling and using foul language. Transcript at 7. The order under review concluded that, more likely than not, claimant engaged in this conduct, and that it was part of a

pattern of other recent willful violations of employer policy. Order No. 25-UI-310190 at 3-4. The record does not support these conclusions.

The employer had a written policy prohibiting “harassment and violence.” Transcript at 16. The employer did not provide further detail at hearing on the terms of this policy. It can reasonably be inferred that, regardless of whether claimant read the employer’s policy, he understood he should not engage in harassment or violence at work. The employer alleged at hearing that claimant had engaged in a pattern of aggressive, confrontational, and otherwise inappropriate conduct toward coworkers, his manager, and others, often using foul language. However, the initial focus of the misconduct analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767, June 29, 2009; Appeals Board Decision 12-AB-0434, March 16, 2012* (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge).² The proximate cause of claimant’s discharge was his alleged conduct in the evening of July 14, 2025.

The COO testified that the store manager reported to him that on July 14, 2025, claimant had begun “expressing his frustrations loudly” at the manager while waiting for her to assign deliveries, “threw a bag of money towards the manager on the floor and yelled. . . ‘How the fuck am I supposed to make money?’” Transcript at 7. In response, the manager told claimant to leave for the day and report to work the following day. The COO was not present for this encounter, but testified that claimant later spoke with him regarding the incident and “confirmed that this was what happened because he apologized to me.” Transcript at 7.

In contrast, claimant testified that during the incident he asked the store manager for money with which to provide change to delivery customers, and the manager “aggressively approached [claimant], screaming,” and said, “Stop being a Jew.” Exhibit 2 at 1. Claimant testified that he “never threw a bag at anyone,” and wrote in a statement prepared for the hearing that he “threw an empty money bag by [his own] feet but immediately picked it back up.” Transcript at 31; Exhibit 1 at 2. Claimant further testified, “I don’t curse because I’m not allowed to [for religious reasons]. . . I do not curse, period.” Transcript at 26. Claimant testified that he spoke to the COO regarding the July 14, 2025 incident the following day and “explained the whole situation,” but asserted he “never once apologized because [he]. . . had nothing to apologize for.” Transcript at 25.

In weighing this evidence, claimant’s first-hand account of the events of July 14, 2025 are entitled to greater weight than the store manager’s hearsay account, and the facts have been found accordingly. The COO’s testimony that claimant spoke with him on July 15, 2025, “confirmed” the store manager’s account, and apologized, is no more than equally balanced with claimant’s testimony denying having admitted to or apologized for any wrongdoing. Transcript at 7. As the employer bears the burden of proof by a preponderance of the evidence, facts relating to this conversation have been found in accordance with claimant’s account. Therefore, the record shows that claimant did not yell or use foul language toward his manager; threw an empty money bag at his own feet, rather than toward the manager; and did not corroborate the manager’s account or apologize when speaking to the COO the next day. Throwing the bag in this manner did not objectively constitute harassment or violence, and the

² If the proximate cause of discharge is shown to be a willful or wantonly negligent violation of a reasonable employer policy, the focus then turns to whether it was an isolated instance of poor judgment by examining the alleged prior policy violations. *See OAR 471-030-0038(3)(b).*

details of the employer's written policy prohibiting "harassment and violence" are not in the record. The employer has therefore not met their burden of showing that claimant's actions constituted a willful or wantonly negligent policy violation. Accordingly, claimant was not discharged for misconduct.

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

DECISION: Order No. 25-UI-310190 is set aside, as outlined above.

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

DATE of Service: December 30, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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 naaiintindihan 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

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກໍາມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຄຳຕັດສິນນີ້, ທ່ານສາມາດຢືນຄໍາຮ້ອງຂໍການທີບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢ່າງຍິ່ງຍອດຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطلة الخاصة بك، إذا لم تفهم هذا القرار، اتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للبرلمانية لمحكمة الاستئناف بأورغون وذلك باتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلا فاصله با هیأت فر جام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می توانید با استفاده از دستور العمل موجود در پیان آن، از دادگاه تجدید نظر اورگان در خواست تجدید نظر کنید.

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