EO: Intrastate
BYE: 08-Aug-2026

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

844
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0736

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 17, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving benefits beginning August 3, 2025 (decision # L0012982698).[1] Claimant filed a timely request for hearing. On November 20, 2025, ALJ Christon conducted a hearing, and on November 26, 2025 issued Order No. 25-UI-312372, affirming decision # L0012982698.[2] On November 28, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: Exhibit 3 was submitted by claimant while the record was kept open after the hearing to allow receipt of additional evidence. Order No. 25-UI-312372 excluded Exhibit 3 from evidence, stating it contained information that "appear[ed] to be possible violations of the Health Insurance and Accountability Act of 1996 ('HIPAA')." Order No. 25-UI-312372 at 1-2 (footnote omitted). However, the employer did not object to the admission Exhibit 3, and Order No. 25-UI-312372 did not explain how HIPAA can act to bar evidence from being admitted into the hearing record, particularly when no objection is made. Further, because part of the employer's reason for discharging claimant was their belief that her disclosure of some of the information violated HIPAA, which claimant disputed, the information is relevant and appropriate for EAB to review and consider. *See* OAR 471-040-0025(5) (August 1, 2004) ("Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. . . All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible."). Therefore, Exhibit 3 is admitted into evidence and was considered in reaching this decision.

[1] Decision # L0012982698 stated that claimant was denied benefits beginning August 10, 2025. However, because decision # L0012982698 found that claimant was discharged on August 8, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 3, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

[2] Order No. 25-UI-312372 stated that it affirmed decision # L0012982698 and that the work separation occurred on August 6, 2025, but likewise erroneously stated that the disqualification from benefits was effective August 10, 2025, rather than August 3, 2025, which is presumed to be a scrivener's error.

WRITTEN ARGUMENT: Claimant's November 28 and December 3, 2025 arguments were considered in reaching this decision.[3] The employer's December 19, 2025 and December 23, 2025 arguments 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, or while the record was kept open after the hearing for the submission of additional evidence. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing, and Exhibit 3. EAB considered any parts of the employer's arguments that were based on the hearing record.

FINDINGS OF FACT: (1) C&E All About Caring, Inc. employed claimant as a caregiver from August 6, 2024 until August 6, 2025.

(2) The employer expected that their caregivers would not work unless scheduled, would not attempt to manipulate clients for personal motives or financial gain, and would interact with others in a respectful manner. The employer also expected their employees to comply with HIPAA, including not sharing protected health information about a client with another caregiver who was not part of the client's care team, or with any other party, "without authorization." Exhibit 3 at 11. Claimant was aware of these expectations.

(3) The employer's procedures called for a caregiver to notify an "on call" scheduler when alternate coverage for one of their shifts was needed, and the scheduler would then make the arrangements for coverage. Transcript at 12. On or shortly before July 22, 2025, claimant spoke with another caregiver to see if she was willing to cover one of claimant's shifts with a specific client, rather than claimant contacting the scheduler about the matter. Claimant only gave the other caregiver information about the shift and did not "discuss [the] client." Exhibit 3 at 9. The other caregiver was not part of that client's care team. In later speaking with that caregiver about the matter, the employer's general manager felt that the caregiver "had way too many details about that client, including their name [and] the type of care that was required." Transcript at 18. Based on this, the general manager felt that claimant had disclosed protected health information about the client to the other caregiver, in violation of HIPAA and the employer's policies. On July 23, 2025, the general manager sent claimant an email asserting that this had been a HIPAA violation but did not suggest that additional discipline for this incident would be forthcoming.

(4) Claimant was also part of the caregiving teams of two other clients, a mother and son who initially lived together. The mother had been diagnosed with dementia, and the son had authority to make healthcare decisions on her behalf. By July 2025, the employer had longstanding concerns about claimant working unscheduled hours to accrue overtime pay, particularly involving the mother and son clients, by means that included taking shifts from other caregivers. On July 31, 2025, the employer reiterated in an email to claimant that she could not work any hours for those clients beyond what had already been scheduled by the employer.

(5) Claimant had not been scheduled to work with the mother or son on August 3, 2025 from 7:30 a.m. to 9:30 a.m. However, the employer believed that claimant performed work for the son during those

[3] On December 20, 2025, claimant submitted a written objection to consideration of an audio file submitted to EAB by the employer. For reasons explained later in this decision, the audio file was not admitted as evidence, and the objection is therefore moot.

hours, and that she had the son call the scheduler at 10:43 a.m. to request that claimant retroactively be scheduled to work those hours. After learning of this, the general manager scheduled an August 6, 2025 meeting at which she intended to discipline claimant regarding this matter. Claimant did not work unscheduled hours on August 3, 2025.

(6) On August 4, 2025, claimant was scheduled to help move the mother client into a memory care facility that the son had selected with input from claimant. After claimant began moving in the mother's belongings, the mother's new roommate used or moved some of those belongings and made a mess in the shared bathroom. Claimant summoned the roommate's caregiver at the facility, and had a disagreement with her over what had taken place and how claimant was handling the move-in. The facility's housekeeping staff cleaned the mess, and claimant thought the matter had been "amicably resolved." Transcript at 45.

(7) The son client asked claimant to document his mother's adjustment to the initial few days of living at the memory care facility through photos and video, and to share these with him. Claimant asked a member of the employer's management, M, for "pre-approval" to do this, and was told it "was perfectly fine as long as [the son] approved it and nothing went out on the internet." Transcript at 29.

(8) By August 5, 2025, the memory care facility had complained to the employer that since the prior day's move-in, claimant had "yelled at the clients, was bossing staff around. . . [and] was rude," to the extent that a "whole staff meeting" was conducted at the facility to discuss claimant's behavior, as the staff felt "[un]comfortable with her coming into the facility [again]." Transcript at 16.

(9) Also on August 5, 2025, claimant recorded a video of the mother client wherein claimant "mentioned" the name of another of the employer's caregivers who was part of the mother's care team, and asked four times if "something happen[ed]," and each time the mother essentially replied, "I don't know." Transcript at 25. Claimant sent the video to the son, and when another caregiver saw it on the son's phone, that caregiver alerted the employer's management. The general manager then contacted the son, who agreed to forward her the video. The general manager watched the video and believed that it depicted claimant "coaching the [mother] to say. . . that she doesn't like the other caregiver. . . that the other caregiver. . . was mean, and that she didn't want the other caregiver there." Transcript at 7. The general manager believed that claimant made the video "as a way to obtain that other caregiver's hours," and considered its creation and distribution to the son a violation of HIPAA and confidentiality policies, and possibly "borderline abusive or abuse of a client." Transcript at 5-6, 8.

(10) Through August 5, 2025, the general manager had intended to discipline claimant at an August 6, 2025 meeting for having allegedly worked unscheduled hours on August 3, 2025, and having allegedly been disrespectful to others at the memory care facility on August 4 and 5, 2025. The general manager had intended to allow claimant an opportunity to rebut the facility's complaints before deciding what discipline to impose. However, after obtaining and viewing the video of the mother client later on August 5, 2025, the general manager considered the video to be the "final straw," and decided to discharge claimant for all these alleged policy violations. Transcript at 20.

(11) On August 6, 2025, the employer discharged claimant.

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 for several alleged policy violations occurring between August 3 and 5, 2025. While the general manager testified that claimant making a video of a client and sending it to her son was the "final straw" that led her to discharge claimant, she also asserted the decision was based on the cumulative effect of "just a lot of things all at one time," referring to the other recent alleged policy violations. Transcript at 16, 20. Each of the incidents occurring during that period was part of the proximate cause of discharge and are therefore the initial focus of the misconduct analysis. *See, e.g.*, *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); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

Disclosure of information to another caregiver. The employer alleged that on or before July 22, 2025, claimant disclosed a client's protected health information to another caregiver who was not part of that client's care team, while claimant sought coverage for a shift. The record shows that the employer learned of the circumstances of the allegation by July 23, 2025, and addressed it that day through admonishing claimant that they considered her actions a HIPAA violation. More likely than not, had the events of August 3 through 5, 2025 not also occurred, the employer would not have later discharged claimant for this incident, and it was therefore not a proximate cause of claimant's discharge.

Moreover, even if it had been a proximate cause of claimant's discharge, the evidence of whether claimant improperly disclosed information to the other caregiver is no more than equally balanced. The employer expected their employees to comply with HIPAA, including provisions summarized by the employer's written policy as "[m]edical information is on a need to know basis" and "[s]taff are privilege[d] to client information when they are actively treating them." Exhibit 3 at 11. Claimant understood these policies. The employer asserted that the other caregiver "had way too many details about that client," and assumed claimant was the source of these details because she had been seeking coverage for a shift with that client. Transcript at 18. In rebuttal to this assertion, claimant maintained that she "did not discuss [the] client with [the other caregiver]." Exhibit 3 at 9. As such, the employer failed to show by a preponderance of the evidence that claimant disclosed information about the client to another caregiver in violation of HIPAA or internal policy.

Working unscheduled hours. Regarding the allegation that claimant worked unscheduled hours on August 3, 2025, the evidence also was no more than equally balanced. The general manager testified that on July 31, 2025, she emailed claimant to reiterate that claimant was not to work any unscheduled

hours, particularly for the mother and son clients, in response to longstanding concerns that claimant had been working unscheduled hours to accrue overtime pay. Transcript at 13-14. Claimant did not dispute having received the email, and the record shows she understood the expectation that was expressed in it. The general manager suggested at hearing that claimant had not been scheduled to work on August 3, 2025, from 7:30 a.m. to 9:30 a.m., but that she had worked during those hours, grocery shopping for the son, and that at 10:43 a.m., the son called the employer's scheduler to request she be retroactively scheduled to work those hours. Transcript at 60-61. In rebuttal, claimant testified that she "[knew] nothing about" the incident and did not "normally do grocery shopping at 7:30 in the morning." Transcript at 61-62. When asked at hearing if she had been scheduled to work those hours, claimant replied, "I've never worked a shift that I. . . was not schedule[d] for. No." Transcript at 60. In weighing these accounts, the employer has not shown by a preponderance of the evidence that claimant worked unscheduled hours on August 3, 2025.

Conduct at the memory care facility. Regarding the allegation that claimant acted in a disrespectful manner when moving the mother client into the memory care facility on August 4 and 5, 2025, the evidence was also no more than equally balanced. The employer expected their employees to interact with others in a respectful manner, and it is reasonable to infer that claimant understood this expectation. The memory care facility reported to the employer that when claimant was moving in the client, claimant had "yelled at the clients, was bossing staff around. . . [and] was rude," and that they held a "whole staff meeting with the facility because they. . . did not feel comfortable with her coming into the facility [again]." Transcript at 16. Claimant disputed the facility's account, testifying that she began moving the client's belongings into the shared room while alone, then the roommate entered, "grabbed" some of the client's things, and "smeared feces" around the shared bathroom. Transcript at 40. In response to this, claimant had a facility employee summon the roommate's caregiver. After claimant "confronted" that caregiver about the mess, the caregiver was "upset" with claimant and blamed the roommate's actions on the roommate being "confused" by claimant having moved her belongings around. Transcript at 41, 46. Claimant denied to the caregiver having done anything wrong and said that she had acted in accordance with the facility administration's instructions. The facility's housekeeping department cleaned the mess in the bathroom, and claimant felt that the situation had been "amicably resolved." Transcript at 45.

In weighing this evidence, claimant's first-hand account of what transpired at the facility is entitled to greater weight than the facility's hearsay account, and the facts have been found accordingly. Claimant's conduct, as described in her own account, was not objectively disrespectful, and the employer therefore failed to show by a preponderance of the evidence that she violated a reasonable employer expectation in that regard.

Recording and sending video of a client. The order under review concluded that claimant's actions in making a video of the mother client and sending it to her son violated HIPAA, and the employer's related confidentiality policy, with wanton negligence. Order No. 25-UI-312372 at 4-5. The record does not support this conclusion.

Claimant understood that the employer expected her to comply with HIPAA, and a related provision in the employer's written policy which stated, "Client information is not to be shared with any other persons without authorization." Exhibit 3 at 11. Claimant did not dispute that on August 5, 2025, she recorded video of the mother client in the memory care facility while prompting her to discuss aspects of

her care, and shared that video with the son client.[4] Claimant also did not dispute that the mother client was not capable of giving informed consent for the creation or distribution of the video due to experiencing dementia.

However, claimant asserted that the son directed her to make and send the video, and implied that she believed he had the legal authority under HIPAA to do so. The record suggests that the son had authority to decide whether his mother would be placed in a memory care facility and to select the facility. It is reasonable to infer from this that the son had been granted authority to make some, if not all, healthcare decisions for his mother, and as her personal representative in that capacity would be privy to her protected health information under HIPAA.[5] The employer has therefore not shown by a preponderance of the evidence that claimant making or sending the video to the son violated HIPAA, due to the son's prior authorization of it.

Similarly, with respect to the employer's internal policies regarding confidentiality of client information, claimant asserted that she sought and received permission from M, a member of the employer's management, to make and send the video "as long as [the son] approved it and nothing went out on the internet." Transcript at 29. In rebuttal, the general manager suggested that M did not give permission for the video, testifying that it was M who brought the video to her attention and recommended that claimant be disciplined for it "because it was not appropriate." Transcript at 64. As the evidence regarding whether M gave claimant permission to make and send the video is no more than equally balanced, the employer failed to rebut claimant's testimony by a preponderance of the evidence, and the facts have been found in accordance with claimant's account. Therefore, claimant obtained permission from M to make and send the video, and therefore did not violate the employer's policy regarding disclosure of protected health information "without authorization." Exhibit 3 at 11.

Finally, the employer asserted that claimant's conduct depicted in the video "could be [considered] borderline abusive or abuse of a client," as they believed it showed claimant "coaching" a client with dementia to make a false complaint against another caregiver so that claimant could obtain that caregiver's work hours and thereby accrue overtime pay. Transcript at 5-8. It can reasonably be inferred that claimant understood the employer prohibited their employees from attempting to manipulate clients for their own financial gain, and that doing so could be considered abuse. The parties gave conflicting testimony on what the video depicted claimant saying. The general manager testified that the video showed claimant "coaching the [mother] to say. . . that she doesn't like the other caregiver. . . that the other caregiver. . . was mean, and that she didn't want the other caregiver there," and believed claimant did so "as a way to obtain that other caregiver's hours." Transcript at 5-7. In rebuttal, claimant testified that the video showed the other "caregiver's name. . . [being] mentioned" but that both claimant and the client "said nothing negative." Transcript at 25. Claimant further testified she asked the client if "something happen[ed]" and the client essentially replied that she did not know, and that the video

[4] The parties disputed what claimant said to the mother client in the video, as discussed in greater detail herein. However, even by claimant's account, another caregiver's name was mentioned, then the mother was asked four times if "something happen[ed]," which can reasonably be construed as claimant prompting the client to discuss aspects of her care. Transcript at 25.

[5] *See* 42 USC 164.502(a)(1) ("A covered entity is permitted to use or disclose protected health information. . . [t]o the individual[.]"); (g)(1) ("As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.")

ended after the "fourth time of her doing this." Transcript at 25. As the evidence regarding the video's contents is no more than equally balanced, the employer failed to rebut claimant's testimony by a preponderance of the evidence, and the facts have therefore been found in accordance with claimant's account. That claimant repeatedly asked the client only whether "something happen[ed]," without suggesting what claimant desired the answer to be or eliciting a negative response regarding the other caregiver, is insufficient to conclude that claimant was attempting to coach or manipulate the client to serve claimant's own interests. Therefore, the employer has not shown that claimant engaged in abusive behavior toward the client in the video.

In sum, the employer failed to show by a preponderance of the evidence that claimant willfully or with wanton negligence violated HIPAA or a reasonable employer policy with respect to each of the incidents that collectively constituted the proximate cause of claimant's discharge. Accordingly, the employer failed to establish that claimant's discharge was for misconduct. Claimant is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 25-UI-312372 is set aside, as outlined above.

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

DATE of Service: January 7, 2026

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 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.

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