EO: Intrastate
BYE: 06-Jun-2026

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

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DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0737

Reversed & Remanded

PROCEDURAL HISTORY: On July 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0011888748). The employer filed a timely request for hearing. On November 12, 2025, ALJ Contreras conducted a hearing, and on November 25, 2025 issued Order No. 25-UI-312231, reversing decision # L0011888748 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective May 25, 2025. On November 28, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Providence Health & Services Oregon employed claimant as an acute care registered nurse at one of the employer's medical facilities from October 23, 2023 through May 28, 2025.

(2) The employer's attendance policy specified that employees were permitted five attendance "occurrences," which included absences, tardies, and early departures, per rolling 12-month period.

Transcript at 9. The policy also specified that if an employee exceeded the five-occurrence limit, they would be subject to disciplinary action.

(3) The employer "request[ed]" that employees primarily clock in for their shifts by swiping their badge at a card reader at one of the facility's entrances when they arrived for work. Transcript at 12. However, a "time editor" program was also available for employees to use if, for example, a card reader wasn't working correctly or the employee needed to edit an incorrect time entry. Transcript at 13.

(4) In April 2024, the employer gave claimant a "coaching" on their attendance policy. Transcript at 9. On December 17, 2024, claimant's manager met with her to discuss several policy violations that claimant had accrued, including 13 attendance occurrences over the course of 2024, and to issue claimant a "final corrective action." Transcript at 9. During the meeting, the manager reviewed the attendance policy with claimant and "discussed the importance of reviewing and approving [her] time card at the end of each pay period to ensure there's no incremental overtime due to inaccurate timekeeping." Transcript at 23.

(5) On April 12, 2025, claimant arrived at work at her scheduled start time of 3:00 p.m. The card reader at the entrance she used was not working, so she instead clocked in using the time editor program. However, claimant made a mistake when she did so, and entered her start time as 3:30 p.m. instead of 3:00 p.m. Claimant later discovered her mistake, but decided against correcting it in the time editor program because of the "hassle of dealing with" the process of correcting her timecard, and also because her having done so on a prior occasion led the employer to audit her time entries. Transcript at 19.

(6) On April 28, 2025, claimant's manager received a report that claimant had been gone for her 45-minute lunch break for over an hour. This led the manager to review claimant's timecard records further, which resulted in her discovering "two late swipe ins" in claimant's records, including the late clock-in on April 12, 2025. Transcript at 13–14. The employer subsequently interviewed claimant about her attendance. During the interview, claimant gave the employer a reason for her late return from her lunch break on April 28, 2025, which the employer accepted as sufficient to not "pursue termination" for that incident. Transcript at 14. Regarding the April 12, 2025 late clock-in, claimant explained to the employer that she was not late that day, but had entered her start time incorrectly using the time editor program.

(7) After the interview, the employer began an audit of claimant's timecard records, as they had become concerned that she had been "committing time card fraud." Transcript at 13. The investigation revealed that between March 3, 2025 and April 12, 2025, claimant had ten late arrivals of six minutes or more; and that during the same time period, claimant had "17 self-edits on her time card." Transcript at 8.

(8) On May 28, 2025, the employer discharged claimant due to a "violation of [their] timekeeping policy, and attendance, and punctuality policies." Transcript at 8.

CONCLUSIONS AND REASONS: Order No. 25-UI-312231 is set aside and this matter remanded for further development of the record.

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 on May 28, 2025 due to "violation of [their] timekeeping policy, and attendance, and punctuality policies," after investigating claimant's timecard records. Order No. 25-UI-312231 found that the employer discharged claimant for "violating the attendance and timekeeping policy on April 12, 2025," and explained that these policies required "employees to arrive for work as scheduled and to accurately record their time… to use their identification badges to swipe into the time clock… [and to] fill out a form to correct their time entry" if they made a mistake in entering their time. Order No. 25-UI-312231 at 3. The record as developed was not, however, sufficiently developed to determine precisely which of claimant's actions constituted the proximate cause(s) of the employer's decision to discharge her.[1]

At hearing, claimant's manager testified that the "last straw" which caused the employer to discharge claimant was "the 30 minutes late on April 12, 2025." Transcript at 8. Later, the ALJ asked the witness if claimant would have been discharged if she "had not been late that day." Transcript at 12. In response, the witness testified, "We were not planning on discharging her unless she had a policy violation." Transcript at 12. Given the employer's equivocal answer in the latter instance, as well as the other attendance-related incidents that apparently occurred both before and after April 12, 2025, which employer did not discover until investigating the April 12, 2025 incident, further inquiry is necessary to determine the proximate cause of claimant's discharge.

On remand, the ALJ should clarify with the employer's witness the incident or incidents without which the employer would not have discharged claimant when they did. To the extent that the record on remand shows that claimant's conduct on April 12, 2025 was a proximate cause of the discharge, the ALJ should clarify what about claimant's conduct that day caused the employer to discharge her. The record shows that claimant had a late clock-in on April 12, 2025, which she explained to the employer was the result of an error she had made on her timecard made after arriving on time, but that she also failed to correct the error she purportedly made. The record also suggests that the employer nevertheless believed that claimant had been late for work on April 12, 2025. It is not clear from the record whether it was the employer's belief that claimant was late for work that day, or claimant's failure to correct her timecard after her mistake, which led the employer to discharge her. On remand, the ALJ should clarify

[1] *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).

this point. The ALJ should also further develop the record to show what the employer's specific expectations were regarding the correction of timesheet errors, and how claimant would have known of these expectations.

Even if the record on remand shows that claimant's conduct on April 12, 2025 was the sole proximate cause of claimant's discharge, further inquiry should still be made regarding her other violations of the employer's attendance policies. Order No. 25-UI-312231 concluded that claimant's conduct on April 12, 2025 was not an isolated instance of poor judgment because she "had a history of violating the employer's timekeeping and attendance policies[.]" Order No. 25-UI-312231 at 4.[2] However, this history was not explored further.

OAR 471-030-0038(1)(d)(A) excludes from the definition of "isolated" acts involving poor judgment that are repeated or part of a pattern of other willful or wantonly negligent behavior. An act involving poor judgment is defined as "A decision to willfully violate an employer's reasonable standard of behavior," or a "conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior." OAR 471-030-0038(1)(d)(C). In other words, it is not sufficient that claimant had violated the employer's policies on other occasions. Instead, the record must be developed to show whether those other violations were willful or wantonly negligent. On remand, the ALJ should develop the record with sufficient detail to show what, in particular, claimant's previous policy violations were, including when they took place, what they consisted of, and what explanation, if any, claimant had for each instance, so as to determine whether claimant was discharged for an isolated instance of poor judgment.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division,* 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 25-UI-312231 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 25-UI-312231 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: <u>January 6, 2026</u>

[2] 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).

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-312231 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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

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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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