

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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0746

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 22, 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 18, 2025 (decision # L0011963789).¹ Claimant filed a timely request for hearing. On November 12, 2025, ALJ Laurie-Gardiner conducted a hearing, and on November 13, 2025 issued Order No. 25-UI-310363, reversing decision # L0011963789 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On December 3, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their argument to claimant 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 the employer's reasonable control prevented them 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).

FINDINGS OF FACT: (1) Oppenlander, Inc. employed claimant as a dispatcher for their towing company from December 28, 2023 until May 22, 2025.

(2) The employer expected that their dispatchers would accurately obtain and record specific information from callers requesting service. Claimant understood this expectation.

¹ Decision # L0011963789 stated that claimant was denied benefits from May 18, 2025 to May 16, 2026. However, decision # L0011963789 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 18, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) On May 8, 2025, the employer presented claimant with a “last chance disciplinary agreement” based on their belief that claimant had made errors in her work and otherwise violated the employer’s policies on several occasions up to that point. Transcript at 18. The “agreement” warned claimant that she could be discharged for any further errors or policy violations.

(4) On May 9, 2025, claimant took a call from a customer in which billing information was changed, and claimant failed to record the customer’s last name and insurance policy number. The employer’s written guidelines provided that dispatchers must record that information in such a situation.

(5) On May 14, 2025, claimant took a call from a customer who requested service at a parking garage “off Butler [Street],” and claimant entered that information in the dispatch request. Transcript at 28. The employer’s written guidelines provided that dispatchers must record a specific address in dispatch requests, and considered claimant’s entry insufficient.

(6) On May 15, 2025, claimant took a call for service from a customer and recorded his name as “Larry.” Transcript at 27. When the payment information on the customer’s account was later found to be incorrect, the employer had difficulty reaching the customer to correct it. Upon reviewing an audio recording of the call, the employer determined that the customer had given the name “Ken,” rather than Larry, and they were able to communicate with the customer after learning this. Transcript at 27.

(7) On May 16, 2025, claimant took a call for service regarding a police vehicle at Hillsboro Airport. The employer’s written guidelines provided that dispatchers must record the unit number of a police vehicle for billing purposes, and may not list the service address as simply “airport parking lot” due to Hillsboro Airport having multiple parking lots. Transcript at 22. The caller was unable to provide the unit number of the vehicle, and claimant therefore did not record it. The employer believed that claimant recorded the service location as “airport parking lot,” but claimant recorded it as the airport’s “main entrance.” Transcript at 38. Claimant contacted the tow driver and confirmed that he understood the vehicle location and the need to obtain the unit number upon arrival.

(8) On May 22, 2025, the employer discharged claimant for the alleged policy violations that occurred on May 9, 14, 15, and 16, 2025.

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).

Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The initial focus of the discharge analysis is 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; *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). It is unclear from the record when the employer learned of the alleged policy violations that occurred after the May 8, 2025 last chance agreement was issued. However, it is more likely than not that each of the alleged violations occurring after May 8, 2025 factored into the employer's decision to discharge claimant, and they are therefore, jointly considered the proximate cause of her discharge and the initial focus of the misconduct analysis.

The employer had written guidelines for their dispatchers which required specific information to be obtained and recorded regarding service calls, and claimant was generally aware of those guidelines. The employer asserted that on May 9, 14, and 15, 2025, claimant violated the guidelines by failing to record a customer's last name and insurance policy number; listing a service location as a parking garage "off Butler," rather than a numerical address; and mis-recording a customer's name as "Larry" rather than "Ken," respectively. Transcript at 27-28. Claimant did not provide specific rebuttals to those assertions in her testimony.

However, claimant explained that customers' vehicles would often break down in locations unfamiliar to them and they therefore were unable to provide her with numeric addresses, but she would record location information with enough specificity for the responding tow driver to locate the vehicle. Transcript at 43. Claimant also explained that, for similar reasons, callers often had poor mobile phone reception at the sites of vehicle breakdowns, and that claimant's telephone headset was faulty, such that calls would "break up and it would get staticky or the customers would cut in and out." Transcript at 42. Claimant further testified regarding the final errors for which she was discharged that "some of them I didn't know [were] mistakes," and that she received conflicting information about procedures that "made it very challenging at times to make sure I was doing the right thing. But I tried because I did not like making mistakes at all." Transcript at 43, 45. These explanations suggest that claimant's failures to accurately obtain and record information from callers in accordance with the written guidelines were the result of her mishearing callers, callers being unable to provide needed information, and inefficiencies related to her level of skill and experience. The employer has not shown that claimant consciously failed to obtain and record information through indifference to the consequences of her actions. Therefore, these failures were the result of no more than ordinary negligence.

The employer also asserted that on May 16, 2025, claimant failed to obtain and record the unit number of a police vehicle, and recorded its location only as an airport parking lot, which lacked sufficient specificity. Claimant partially rebutted this assertion, testifying that she recorded the location as the airport's main entrance, and that she contacted the responding tow driver to ensure that he understood the location. Transcript at 38-39. As these accounts are no more than equally balanced, and the employer bears the burden of proof by a preponderance of the evidence, this fact has been found in accordance with claimant's account. Therefore, claimant obtained and recorded sufficient information regarding the vehicle's location to comply with the employer's policies. Regarding the vehicle unit number, claimant testified that she asked the caller for that information but he "did not know [it]," and she therefore asked

the tow driver to obtain it upon arrival. Transcript at 34. The record does not show what the employer expected claimant to do when a unit number could not be obtained from a caller, and her solution of having the tow driver obtain it did not evince indifference to the employer's interests. Therefore, claimant did not willfully or with wanton negligence violate policy regarding the unit number. Accordingly, the employer has not shown that the incidents of May 9, 14, 15, or 16, 2025 constituted 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-310363 is affirmed.

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

DATE of Service: January 13, 2026

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، می توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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