

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0750**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On September 29, 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 August 3, 2025 (decision # L0013167013). Claimant filed a timely request for hearing. On November 21, 2025, ALJ Naylor conducted a hearing, and on November 24, 2025 issued Order No. 25-UI-311922, affirming decision # L0013167013. On December 5, 2025, claimant filed an application for review of Order No. 25-UI-311922 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision. One of the central points of the argument was that the order under review erred in concluding that by denying responsibility for the damage to the shelving pole he struck with a forklift, claimant's actions exceeded mere poor judgment, and therefore could not be excused as an isolated instance of poor judgment. Claimant's Written Argument at 2-4. The record supports the order under review's conclusions.

Video evidence shows that when the forklift struck the pole, claimant more likely than not immediately knew that this was what had occurred, as evinced by claimant instantly turning to look at the pole when he felt the forklift shake from striking it. Exhibit 1 Video at 0:04 to 0:10. Seconds later, claimant is seen parking the forklift and inspecting the pole, and he later testified that he observed visible damage but "[did] not know if it was severe." Exhibit 1 Video at 0:30 to 0:50; Transcript at 24. While the closest shelf supported by the pole was empty, under these circumstances, claimant's assertion that there was a chance "in the 50-50 range" that the damage was pre-existing, already known to the employer, and not caused by what had just occurred, was not reasonable. Transcript at 23. More likely than not, claimant knew or should have known that the forklift had damaged the pole, and that this was a potential safety issue that the employer expected him to immediately report. Claimant consciously failed to immediately make such a report, with indifference to the consequences of his actions, and therefore violated the employer's reasonable expectation with wanton negligence.<sup>1</sup>

<sup>1</sup> "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

Claimant is correct in that when the employer discussed the matter with him on August 1, 2025, and again on August 8, 2025, the record shows that he did not unequivocally deny responsibility for the damage. However, by claimant's own account at hearing, he repeatedly maintained to the employer that he was "not sure" and "did not know" whether he had caused the damage to the pole, and suggested that it was as likely as not that something else had caused the damage, when the evidence shows that claimant had no reasonable basis to make such insinuations, and knew or should have known that in all likelihood he had caused the damage. Transcript at 23-24. These continuing attempts to sow doubt about how the damage occurred could cause a reasonable employer to conclude that there had been a breach of trust regarding a safety issue, and that a continuing employment relationship was therefore no longer possible. As such, the record supports the conclusion that claimant's actions exceeded mere poor judgment, rather than constituting an isolated instance of poor judgment within the meaning of the rule, and he was therefore discharged for misconduct.<sup>2</sup>

**ADOPTION OF HEARING ORDER:** EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with Order No. 25-UI-311922's findings of fact, reasoning, and conclusion that claimant was discharged for misconduct. Order No. 25-UI-311922 is **adopted**. *See* ORS 657.275(2).

**DECISION:** Order No. 25-UI-311922 is affirmed.

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

**DATE of Service: January 14, 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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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).

<sup>2</sup> 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).

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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

ចំណុចសំខាន់ – សេចក្តីសម្រាប់នោនដិលប៉ះពាល់ដិលអត្ថប្រយោជន៍គ្នានករោងធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រាប់នោន គួរតាកំឡុងគោលការងារខ្លួនរបស់គ្នាបាន ក្នុងការខ្ចោនរបស់គ្នាបាន ក្នុងការងារខ្លួន។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រាប់នោនទេ លោកអ្នកអារ៉ាការណ៍ការងារខ្លួននឹងត្រូវបានការពារនិភ័យដើម្បីដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរស់នៅខាងចុងបញ្ហាប់នៃសេចក្តីសម្រាប់នោន។

## Laotian

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

## Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، اتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمرجعية القانونية بمحكمة الاستئناف بأورغون و ذلك 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 پایان آن، از دادگاه تجدید نظر اور گان در خواست تجدید نظر کنید.

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