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



# EMPLOYMENT APPEALS BOARD DECISION
# 2025-EAB-0758

*Affirmed*
*No Disqualification*

**PROCEDURAL HISTORY:** On September 30, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and denied benefits effective July 27, 2025 (decision # L0013208085).[1] Claimant filed a timely request for hearing. On November 20, 2025, ALJ Micheletti conducted a hearing, and on November 26, 2025 issued Order No. 25-UI-312366, reversing decision # L0013208085 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On December 5, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

In their written argument, the employer stated that the entity who employed claimant was not Kaiser Logistics, Inc., but a separate legal entity called Kaiser Transport, Inc. The employer requested that EAB name Kaiser Transport, Inc. as the employer in this matter and vacate any notices or charges assessed against Kaiser Logistics, Inc. EAB does not have the authority to change the employer in this matter from Kaiser Logistics, Inc. to Kaiser Transport, Inc. The employer is urged to contact the Department directly to request that any notices or charges assessed be directed to Kaiser Transport, Inc.

**FINDINGS OF FACT:** (1) Kaiser Logistics Inc. employed claimant as a truck driver from May 14, 2025 until May 30, 2025.

[1] Decision # L0013208085 stated that claimant was denied benefits from July 27, 2025 to July 25, 2026. However, decision # L0013208085 should have stated that claimant was denied benefits beginning July 27, 2025 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(2) The employer had an email system drivers could use to communicate with other drivers and the employer's other employees. The employer expected employees to refrain from using unprofessional language via the email system. Claimant understood that using unprofessional language via the email system was prohibited and could result in a disciplinary write-up.

(3) On May 23, 2025, claimant injured his abdominal area while unloading one of the employer's trucks. Claimant also generally held strong opinions about the importance of driver safety, and felt that the employer's other drivers placed too much emphasis on the appearance or cleanliness of the employer's trucks.

(4) On May 24, 2025, claimant was using the employer's email system to communicate with the employer's other drivers. Claimant saw emails from other drivers that stressed the importance of truck cleanliness. Claimant sent emails expressing his view that there had been "a lot of damage to freight and a lot of drivers were getting injured," and that in his opinion, "safety was more important than always talking about shiny trucks." Audio Record 12:44.

(5) Claimant's emails elicited reply emails from other drivers that claimant felt had a mocking tone and conveyed the idea that claimant would not last long as an employee because he did not place enough emphasis on truck cleanliness. In response to these emails, claimant sent an all-employee email in which he stated, "If I was in charge, in my opinion, I'd fire all your asses because safety is more important than a shiny truck." Audio Record at 14:33.

(6) On May 30, 2025, the employer's head of human resources (HR) met with claimant. The head of HR stated that claimant's comment relating to "the shiny truck" had angered the employer's owner, and that the employer was discharging claimant for making the comment on the employer's email system. Audio Record at 18:15.

(7) Prior to being discharged, the employer had not disciplined claimant for violation of any workplace policies, had told claimant that he was "doing a fantastic job," and that they thought highly of him. Audio Record at 14:09.

**CONCLUSIONS AND REASONS:** The employer discharged claimant for an isolated instance of poor judgment, and not 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). Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for using their email system on May 24, 2025 to state to the other drivers, "If I was in charge, in my opinion, I'd fire all your asses because safety is more important than a shiny truck." Audio Record at 14:33. The employer expected employees to refrain from using unprofessional language via the employer's email system. Claimant's email statement violated the employer's expectations because it was rude and involved use of foul language, and so constituted use of unprofessional language via the employer's email system.

Claimant's email statement violated the employer's expectations with wanton negligence. At hearing, claimant conceded that he thought that making his comment in an email would probably result in the employer giving him a disciplinary write-up. Audio Record at 17:04. The record therefore shows that claimant knew his statement probably violated the employer's standards of behavior. The record also shows that claimant was conscious of his conduct and acted with indifference to the consequences of his actions. Claimant's behavior in the drafting and then sending of an email required forethought and was not an unconscious act or spontaneous utterance. Accordingly, the record shows that the employer discharged claimant for violating their expectations with wanton negligence.

However, claimant's wantonly negligent violation was not misconduct because it was an isolated instance of poor judgment. Under OAR 471-030-0038(3)(b), isolated instances of poor judgment are not misconduct. 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).

Claimant's wantonly negligent violation was isolated. At hearing, when asked if the May 30, 2025 discharge meeting with the head of HR was the only time the employer had disciplined claimant for violation of a workplace policy, claimant testified that it was and that otherwise the employer had praised claimant for "doing a fantastic job," and told him that they thought highly of him. Audio Record at 14:09. The employer did not rebut this testimony. Claimant testified that the email exchanges that occurred between himself and the other drivers on May 24, 2025 took place over the course of two or three hours. Audio Record at 13:11. However, the only unprofessional email statement brought to light at the hearing record was claimant's "safety is more important than a shiny truck" comment. Audio Record at 14:33; 23:09. The record evidence demonstrates that it was this comment that prompted the employer to discharge claimant because, when asked about any specific language raised by the head of HR during the discharge meeting, claimant testified that "she said my language about the shiny truck infuriated the owner of the company, and it upset him, and that was basically the main issue they were having." Audio Record at 18:15. The employer did not contradict this testimony or offer evidence to show that claimant had made other improper email statements on May 24, 2025 that might have factored into the employer's decision to discharge him.

In their written argument, the employer asserted that, in his email exchanges on May 24, 2025, claimant had called other drivers "idiots" and made other rude and unprofessional statements in addition to the "shiny truck" statement. Employer's Written Argument at 3. However, this information is extraneous to the hearing record and therefore not considered. And even if it were the case that claimant had, over the course of two or three hours, called drivers "idiots" and made other rude statements in addition to the

"shiny truck" statement, claimant's entire course of conduct over the two- or three-hour period would be treated as a single occurrence for purposes of the isolated instance of poor judgment analysis. *See Perez v. Employment Dep't*, 164 Or. App. 356, 992 P.2d 460, 467 (1999) ("[The] isolated instance of poor judgment analysis focuses on whether the incident was a single occurrence in the employment relationship, . . . and not whether the incident involved more than one component act by the employee.") (internal quotation marks removed); *see also Waters v. Employment Div.*, 125 Or. App. 61, 865 P.2d 368, 369 (1993) (where claimant was discharged for leaving three angry messages on their supervisor's answering machine over the course of an evening, Court held that the multiple messages were a single occurrence in the employment relationship). Accordingly, claimant's wantonly negligent conduct on May 24, 2025 was a single occurrence for purposes of the isolated instance of poor judgment analysis.

Furthermore, claimant's conduct on May 24, 2025 did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. In their written argument, the employer argued that claimant's conduct created an irreparable breach of trust or made continued employment impossible, asserting that claimant's email "escalated a routine discussion into a hostile confrontation, breaching trust and rendering continued employment untenable[.]"Employer's Written Argument at 4. Viewed objectively, however, claimant's statement, "If I was in charge, in my opinion, I'd fire all your asses because safety is more important than a shiny truck" did not create to a breach of trust. *See Callaway v. Employment Dept.*, 225 Or App 650, 202 P3d 196 (2009) (a determination of whether a claimant's conduct caused a breach of trust is objective, not subjective, and the employer cannot unilaterally announce a breach of trust if a reasonable employer in the same situation would not). The statement did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible, as the record does not show that it impeded any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of ongoing legal jeopardy or non-compliance with a regulatory duty.

For these reasons, claimant was discharged for an isolated instance of poor judgment, and not misconduct. Claimant is not disqualified from receiving benefits based on the discharge.

**DECISION:** Order No. 25-UI-312366 is affirmed.

S. Serres and D. Hettle;
A. Steger-Bentz, 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.

**Please help us improve our service by completing an online customer service survey**. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. If

you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

# 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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