

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0771

Reversed
Disqualification

PROCEDURAL HISTORY: On August 28, 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 July 20, 2025 (decision # L0012534499).¹ Claimant filed a timely request for hearing. On November 17, 2025, ALJ Honea conducted a hearing, and on November 25, 2025 issued Order No. 25-UI-312209, reversing decision # L0012534499 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On December 10, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument because they 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).

FINDINGS OF FACT: (1) Sierra Enterprises Oregon, Inc. employed claimant as a gas station manager from June 5, 2024 until July 22, 2025.

(2) The employer had a written policy prohibiting "harassment" toward coworkers and customers, including offensive remarks and physical conduct. Transcript at 11. Claimant understood this policy.

(3) On July 12, 2025, at 4:22 a.m., an employee called claimant, who was not at work, regarding an alarm going off at the store. Claimant did not answer, and the employee did not leave a message. At 5:36

¹ Decision # L0012534499 stated that claimant was denied benefits from July 27, 2025 to July 25, 2026. However, because decision # L0012534499 stated that the work separation occurred on July 22, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 20, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

a.m., claimant called the store and spoke with the employee about why he had called. Claimant felt that the employee should have known how to handle the alarm and was upset that he had called. Claimant was “yelling and cussing” during the call, and the employee told claimant that claimant “didn’t need to cuss at [him],” but claimant continued. Transcript at 7, 14. The employee told claimant that if he “didn’t stop, [the employee] would walk out.” Transcript at 7. Claimant then said, “I will kill you,” and hung up. Transcript at 7.

(4) Following the call, the employee called the store’s assistant manager, R, and reported what claimant had said. The employee also contacted police and filed a report stating that claimant had “threatened [his] life.” Transcript at 7. The employer investigated the employee’s complaint. During the investigation, the employee also alleged that claimant had engaged in similar conduct toward other employees, and that claimant had been regularly forcing R to work off the clock in violation of employer policies.

(5) During the investigation, three other employees at the store reported that throughout their employment, claimant had treated them similarly to what had occurred during the call, in that if they approached claimant for help or he was upset, he would “yell at them and curse at them,” and that they had not reported this for fear of retaliation. Transcript at 9. Additionally, R confirmed that claimant had been regularly requiring him to work off the clock for approximately six months.

(6) Claimant provided a written statement to the employer regarding the July 12, 2025 call in which he “admit[ed] to making the comments,” but maintained that he “was talking to his dog, that he threatened to kill his dog and not the . . . employee.” Transcript at 7. The employer did not believe this explanation, and on July 22, 2025, discharged claimant for his conduct during the July 12, 2025 call, and for having required R to work off the clock.

CONCLUSIONS AND REASONS: Claimant was discharged 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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). 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).

The employer discharged claimant because they believed that he used foul language and made a threat while speaking to an employee by telephone on July 12, 2025, and because they believed that he had been requiring R to work off the clock.² The employer reasonably expected that their employees would not engage in “harassment” of others including making offensive remarks or threatening physical harm. Claimant understood this expectation. The order under review concluded that evidence as to whether claimant directed foul language and a threat to kill at the employee, rather than a dog, was equally balanced, and the employer therefore failed to show by a preponderance of the evidence that claimant violated their harassment policy. Order No. 25-UI-312209 at 3. The record does not support this conclusion.

The record shows that, more likely than not, claimant used foul language and said “I will kill you” during the July 12, 2025 telephone call with an employee. The employee reported this orally and in writing to the employer, and reported this to police shortly after the call. The employer’s witness testified that claimant provided them with a written statement “admitting to making the comments” but explaining that he “was talking to his dog, and that he threatened to kill his dog and not the . . . employee.” Transcript at 7. Claimant did not directly rebut that he made this written statement. Claimant testified regarding the circumstances of the call, “I’m still kind of not fully awake, and I’m yelling and cussing at my dog and talking to [the employee] at the same time[.]” Transcript at 14. Claimant testified that the dog had jumped on his bed and was seeking attention during the call, and claimant was “trying to explain” to the employee what the alarm had meant and how he should have dealt with it, “while getting picked [*sic*] off at [the] dog.” Transcript at 15. Claimant then testified: “And then I just finally said, ‘I’ll call you later,’ and I hung up the phone. And . . . before I hung up the phone, he’s like, ‘don’t cuss at me.’ I go, ‘I’m not cussing at you.’ So I hung up the phone[.]” Transcript at 15. Claimant was then asked, “[D]id you tell him specifically that you were talking to your dog?” and claimant replied, “Yes, I did.” Transcript at 15. Claimant was asked, “And did he acknowledge that?” and claimant replied, “I don’t know. I don’t remember, in all honesty.” Transcript at 15. In rebuttal to the reports of three other employees asserting that claimant typically used foul language toward them when they asked him for help, or when he was otherwise upset, claimant testified that he did not “cuss” at employees “in a mean way,” explaining, “[W]e all pretty much cussed, but not very much at each other.” Transcript at 18.

The weight of this evidence supports that claimant used foul language and said “I will kill you” during the call. Claimant was, more likely than not, angry at the employee for having called him early in the morning regarding a matter that claimant felt the employee should have resolved on his own. Under these circumstances, it is more likely that claimant acted as other employees have alleged he usually did in such situations—directing foul language at the employee—than it is that he directed this language to a dog. It is also more likely that just prior to hanging up the call claimant said “I will kill you” into the telephone in response to the employee objecting to claimant’s use of foul language toward him than it is

² The testimony of the employer’s human resources and payroll managers suggested that claimant’s conduct during the July 12, 2025 call, and their discovery that he had been requiring R to work off the clock, would each have independently caused them to discharge claimant had the other event not occurred. *See* Transcript at 9. Because claimant’s behavior on July 12, 2025 constituted misconduct, as explained in greater detail herein, it is unnecessary to further explore the other proximate cause of his discharge.

that claimant said this to a dog and told the employee that he had been addressing the dog. That the employee immediately reported this conduct to both the employer and the police further suggests that claimant gave the employee no reason to believe that claimant had been speaking to anyone but the employee. The employer has therefore shown by a preponderance of the evidence that claimant consciously made offensive remarks and a threat of physical harm to the employee, with indifference to the consequences of his actions, and that he knew or should have known that doing so was likely to violate the employer's harassment policy. Claimant therefore violated the policy with wanton negligence.

Moreover, claimant's conduct cannot be excused as an isolated instance of poor judgment. Acts that violate the law or are tantamount to unlawful conduct exceed mere poor judgment. ORS 166.065(1)(c) provides, "A person commits the crime of harassment if the person intentionally . . . [s]ubjects another to alarm by conveying a telephonic . . . threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person . . . , which threat reasonably would be expected to cause alarm." Claimant's conduct in saying, "I will kill you," into the telephone just before hanging up the call was at least tantamount to a violation of ORS 166.065(1)(c). Therefore, claimant's conduct exceeded mere poor judgment and cannot be excused under OAR 471-030-0038(3) as an isolated instance of poor judgment. Accordingly, the employer discharged claimant for misconduct.

For these reasons, claimant was discharged for misconduct and is therefore disqualified from receiving unemployment insurance benefits effective July 20, 2025.

DECISION: Order No. 25-UI-312209 is set aside, as outlined above.

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

DATE of Service: January 20, 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.surveymizmo.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، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.