

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0773

*Reversed
No Disqualification*

PROCEDURAL HISTORY: On September 10, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits from July 27, 2025 through July 25, 2026 (decision # L0012865440). Claimant filed a timely request for hearing. On November 18, 2025, ALJ Christon conducted a hearing at which the employer failed to appear, and on November 25, 2025 issued Order No. 25-UI-312089, modifying decision # L0012865440 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective June 29, 2025. On December 12, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Jones & Roth PC employed claimant in administrative support from May 14, 2007 until June 30, 2025. In early 2025, claimant notified the employer that she intended to retire on December 31, 2025.

(2) The employer had a written policy prohibiting discrimination, including based on race or ethnicity. Claimant understood that making a "racist comment" was a form of discrimination prohibited by the policy. Transcript at 21.

(3) In 2024, claimant was working at a reception desk when a courier brought in a food order. Claimant asked the courier questions about the order to determine who had ordered the food, but he "just looked at [claimant] with a blank look," and to claimant "it didn't appear that he spoke English." Transcript at 19. Claimant said something to the effect of "delivery people should speak, be able to speak a little bit of English." Transcript at 19. This was reported to the employer, who warned claimant, "[Y]ou have to be careful what you say," while reassuring her they did not consider her a "racist person." Transcript at 20. After this, claimant re-read the employer's handbook and felt that she "hadn't violated any sort of policy." Transcript at 21.

(4) On March 20, 2025, the employer conducted an online trivia game as a morale-boosting exercise, and claimant's team had questions on the topic of international foods. A coworker was moderating the game and therefore not participating in answering the questions. Claimant felt that she "got along great" with this coworker, and the coworker had previously disclosed to her that she had grown up in Mexico, and the two "talked about food all the time." Transcript at 10. After the game, claimant said to the coworker that she thought the coworker "would have won the game because so many of the questions were on Mexican food." Transcript at 10. Claimant intended this remark as a compliment and did not believe it would be viewed as offensive or a violation of the employer's policies.

(5) On March 21, 2025, claimant spoke with the coworker and the employer's human resources department about the remark and claimant believed that at that time she had "clear[ed] up any misunderstanding." Exhibit 1 at 32. The employer later received complaints about claimant from two employees who worked in a different city than claimant, but the specifics of these complaints were not disclosed to claimant. Claimant believed that these complaints were about overhearing her March 20, 2025 remark during the online contest.

(6) In April 2025, a member of management met with claimant to discuss a complaint that claimant had "questioned [a] coworker's husband's citizenship," referring to the same coworker involved in the March 20, 2025 incident. Transcript at 13. Claimant had not spoken with the coworker about her husband and denied the allegation. Nonetheless, claimant was told that she would need to move her retirement date up to June 30, 2025. Claimant maintained that she did not want to retire earlier than December 31, 2025, but the employer told her that was not an option. The parties thereafter began negotiating the terms of a separation agreement.

(7) On June 6, 2025, claimant and the employer executed a separation agreement that called for claimant to stop working on June 30, 2025, and receive a lump sum payment in consideration for releasing the employer from potential claims arising out of her employment. On June 30, 2025, claimant stopped working for the employer. Regardless of whether claimant accepted a settlement to resolve her potential claims against the employer, the employer would have terminated her employment on June 30, 2025 based on the complaint that she had questioned a coworker's husband's citizenship.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

Nature of the Work Separation. If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

By early 2025, claimant had notified the employer of her intent to voluntarily leave work through retirement on December 31, 2025. By April 2025, the employer had become concerned about allegations that claimant had made remarks viewed as racially insensitive or discriminatory, and based on the most recent allegation told her that she would need to retire no later than June 30, 2025. Claimant reiterated her desire to continue working through the end of the year, but the employer told her that she would not be allowed to continue working after June 30, 2025. At hearing, claimant submitted a letter written by the employer which stated, "[Claimant] intended to stay with the Firm much later into the year –

however she was not given the opportunity and was asked to leave employment much earlier than intended,” and that they considered the separation to be an “Involuntary Termination” that followed “a personnel matter.” Exhibit 1 at 22. Therefore, while claimant signed an agreement that called for her to separate from employment on June 30, 2025, that provision of the agreement was dictated by the employer and not subject to negotiation. Accordingly, because the employer would not allow claimant to continue working after June 30, 2025, despite her willingness to do so, the work separation was a discharge.

Discharge. 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). “[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 based on their belief that claimant had made racially insensitive or discriminatory remarks. The employer had a written policy prohibiting discrimination, including making “racist comment[s].” Transcript at 21. Claimant was aware of this policy. The order under review concluded that claimant was discharged for violating the harassment policy with wanton negligence with respect to her remark during the March 20, 2025 trivia game, and that it was not an isolated instance of poor judgment due to her 2024 remark regarding the food delivery courier. Order No. 25-UI-312089 at 4. The record does not support these conclusions, in part because these incidents were not the proximate cause of claimant’s discharge.

The initial focus of the misconduct analysis is on the proximate cause of the discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009; *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). The record shows that the employer was aware of the 2024 remark claimant made regarding a food delivery courier, and the March 20, 2025 comment claimant made during a trivia contest about international food, shortly after each incident occurred. Claimant received warnings following each incident. Regarding the March 20, 2025 incident, after the human resources department discussed the matter with claimant on March 21, 2025, two additional employees made complaints, but the record suggests that these complainants did not provide new or different information about that incident, and likely reported only that they had also been offended by claimant’s remark. In contrast to these events, when the employer received a complaint in April 2025 that claimant had “questioned [a] coworker’s husband’s citizenship,” the employer told claimant while discussing the complaint that she would no longer be allowed to work after June 30, 2025. Transcript at 13. Therefore, the proximate cause of the employer’s decision to discharge claimant was that allegation.

Claimant testified that while she had “lots of conversations” about personal history with the coworker at issue in the April 2025 allegation, the subject of the coworker’s husband “never came up.” Transcript at 14. Claimant further testified that when told of the allegation, claimant immediately told the employer that it was “not true.” Transcript at 14. As the employer did not participate in the hearing, they failed to rebut claimant’s testimony, and therefore failed to show by a preponderance of the evidence that claimant spoke about a coworker’s husband’s citizenship. Because the allegation constituting the proximate cause of the employer’s decision to discharge claimant was not substantiated at hearing, the employer has not shown that claimant was discharged for a willful or wantonly negligent violation of a reasonable employer policy. Accordingly, claimant was not discharged for 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-312089 is set aside, as outlined above.

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

DATE of Service: January 21, 2026

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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

Laotian

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

Arabic

هذا القرار قد يؤثر على منحة البطلة الخاصة بك، إذا لم تفهم هذا القرار، اتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للبرلمانية لمحكمة الاستئناف بأورغون وذلك 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 پیان آن، از دادگاه تجدید نظر اورگان در خواست تجدید نظر کنید.

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