EO: Intrastate
BYE: 12-Sep-2026

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

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DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0786

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective September 7, 2025 through September 12, 2026 (decision # L0013408545). Claimant filed a timely request for hearing. On December 10, 2025, ALJ Naylor conducted a hearing, and on December 12, 2025 issued Order No. 25-UI-314043, modifying decision # L0013408545 by concluding that claimant was discharged for misconduct, and therefore disqualified from receiving benefits effective September 7, 2025. On December 16, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not say that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also had information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her 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).

The above notwithstanding, claimant asserted in her argument that the hearing proceedings were unfair or the ALJ was biased. In particular, claimant raised two points of concern: first, that the ALJ "reprimanded [claimant] for clearing [her] throat"; and second, that the ALJ excluded from the record testimony that was "not relevant to the dismissal." Claimant's Written Argument at 1. To claimant's first point, during a portion of the hearing, while one of the employer's witnesses was testifying, claimant made vocalizations that sounded like agreements, disagreements, or other commentary with the testimony being given, rather than the clearing of one's throat. Audio Record at 37:00 to 39:30. In response, the ALJ stated to claimant, "I can hear you commenting on her testimony. No, [claimant], it's every time she says something. You need to keep the comments to yourself or mute your line. It's inappropriate." Transcript at 21. Regardless of whether claimant was commenting on the testimony or actually clearing her throat, the ALJ was correct in raising the matter with claimant, as claimant's

vocalizations were disruptive to the proceedings. Claimant has not shown that the ALJ having done so prejudiced claimant's case in any way.

To claimant's second point, the ALJ was required under OAR 471-040-0025(5) (August 1, 2004) to exclude "[i]rrelevant, immaterial, or unduly repetitious evidence" from the record. Claimant asserted in her argument that the "many moving parts" that contributed to her discharge related to her having been overworked. Claimant's Written Argument at 1. The fact that claimant was working long hours may be relevant to the work separation at issue here. However, the specific details of all the work that she was doing that may have constituted overwork are largely irrelevant, as they do not bear on claimant's actions which led to the discharge. As such, the ALJ's exclusion of irrelevant or repetitious testimony about matters not relating to the discharge was proper.

EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1).

FINDINGS OF FACT: (1) Summit Real Estate Management, LLC employed claimant as a resident manager from February 10, 2023 through September 8, 2025. Claimant managed two of the employer's residential rental properties, and had several years of similar experience prior to working for the employer.

(2) The employer was required by the Oregon Residential Landlord and Tenant Act[1] to provide a minimum of 24 hours' notice prior to entering tenants' individual units to perform scheduled maintenance work. Claimant was aware of and understood this requirement, and had issued legally-required notices under the law on several prior occasions. Claimant was also aware that violations of this requirement could result in the employer incurring statutory penalties. Additionally, the employer's policy required that an employee contact their supervisor if they forgot to properly post such a notice. Claimant was trained on and aware of this policy.

(3) To create the entry notices, the employer used a form-based application that generated the notices, which employees could then print and post for the affected residents. Although the application allowed the user to edit the posting date of the notice created in the application, it also printed on the notice the actual date the notice was created. This latter date could not be edited by the user.

(4) In the summer of 2025, the employer was in the middle of a multi-phase maintenance project at one of the two properties that claimant was managing. During this time, claimant had typically been working seven days per week, often ten to 12 hours per day, and was "exhausted." Transcript at 25.

(5) On or around August 18, 2025, claimant generated and posted entry notices for four of the tenants at one of the properties she managed because their units were scheduled for drywall installation as part of the maintenance project. Claimant expected this phase of the project to be completed within two weeks of when she posted the notices. However, the work was not completed within the timeframe that claimant had expected, and the notices she had posted expired on September 1, 2025. Because of the

[1] *See* ORS Chapter 90.

Labor Day holiday weekend and her work at the other property, claimant had not been on-site at this property for several days and therefore did not immediately realize that the notices had expired.

(6) On September 2, 2025, workers entered the four units slated for drywall installation. At that time, the landlord had not given the tenants of those units a minimum of 24 hours' notice of the entry, resulting in a violation of the Landlord and Tenant Act. Sometime after the workers entered the units, claimant realized that the previous notices had expired and that she had not yet generated new ones. In response, claimant generated new notices and had them posted. The notices were printed with a posting date of September 1, 2025, but a generation date of September 2, 2025. Claimant did not contact her manager after discovering the lack of notice. Had she done so, the employer may have been able to halt the notice-less entry into some of the units, obtained verbal permission from the tenants to enter, or otherwise mitigated the issue.

(7) On September 2, 2025, after the workers entered the units without proper notice, three of the affected tenants contacted claimant's manager to complain or raise concerns about the lack of notice for the entries. After investigating the matter and speaking with the owner of the business, the manager contacted claimant to discuss what had happened. Claimant did not deny that she had posted the notices the same day as the entry. Claimant told the manager that, for various reasons such as other communications the tenants had received regarding the project, "it shouldn't have been a big deal." Transcript at 8.

(8) On September 8, 2025, the employer discharged claimant due to her actions on September 2, 2025.

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 due to her actions on September 2, 2025. As a preliminary matter, it is necessary to determine the proximate cause of the employer's decision to discharge claimant. *See e.g. 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); *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). Although claimant's failure to properly post the entry notices started the series of events which led to claimant's discharge, the record shows that this was not the proximate cause of the discharge. Instead, the proximate cause was claimant's falsification of the date on the notices *after* realizing that she had failed to properly post the notices, and her failure to contact the employer about the matter.

The record suggests that claimant's initial failure to post the notices prior to the entry of the workers on September 2, 2025 was merely the result of a mistake she made due to being overworked. The record does not show by a preponderance of the evidence that this was more than ordinary negligence, such that it would constitute misconduct. However, at hearing, claimant's manager testified:

> The fact that [the notices were] illegally posted, and we made illegal entries into these units, we would have had to terminate her. We would have liked for her to, you know, be honest and upfront about it. But, yeah, I don't, I don't, we would have to terminate just because it could have been brought to our attention, and we could have delayed the work to happen, but she took it upon herself to just post these illegal notices and pretend kind of like it didn't happen, if that makes sense.

Transcript at 9. While it is not clear from the timing of events that the employer could have actually prevented the workers from entering the units without proper notice, the above testimony nevertheless shows that it was claimant's actions *after* realizing that she had failed to post the required notices that directly led the employer to discharge her. Additionally, the fact that the employer's policy required employees to contact their supervisor if they forgot to properly post a notice suggests that the employer may be willing to forgive a mistake if it was timely reported to them. Thus, claimant's actions on September 2, 2025, rather than the initial failure to post the notices on or before September 1, 2025, are the proper focus of the misconduct analysis.

The employer reasonably expected claimant to contact them when she realized she had forgotten to post the notices. Because claimant did not do so, she violated their reasonable expectations. At hearing, claimant testified that she chose not to contact the employer about the forgotten notices because "everybody was extremely busy" and claimant "didn't like going to them and making their day harder[.]" Transcript at 27. This testimony, while plausible when taken on its own, is implausible when viewed together with claimant's other violation of the employer's expectations that day.

After claimant discovered on September 2, 2025 that she had failed to post the required notices of the workers' entry into the tenants' units, leading to illegal entries into at least some of the units, claimant created and posted new notices which were dated the day prior. Claimant testified at hearing that this incorrect date was the result of her having "made a date mistake" because she was "exhausted." Transcript at 25. This explanation is implausible. While it is possible for claimant to have made a mistake on the posting date on the notices, claimant posted the notices *after the illegal entries had already occurred*. There is no apparent reason that claimant could have, in good faith, posted notices of

an event that claimant knew had already occurred, and claimant did not offer such a reason at hearing. Instead, the only likely explanation is that claimant realized her mistake and then attempted to cover it up by backdating the notices so that they appeared to have been posted on time. In this context, the fact that claimant did not immediately notify the employer was more likely the result of claimant's hope that the employer would not find out about her initial mistake, rather than an attempt to save them from having to do more work. It can be reasonably inferred from the record that the employer expected claimant not to falsify legally-required notices and, likewise, that claimant at least implicitly understood this expectation because she was aware of the legal requirements which bound the employer.

Thus, claimant's actions which resulted in her discharge were, more likely than not, the intentional falsification of legally-required notices and the intentional omission of the fact that she had failed to timely post the required notices. As such, the final incidents which led to claimant's discharge were willful violations of the employer's expectations. Although the record does not show that claimant had previously engaged in other willful or wantonly negligent violations of the employer's expectations, claimant's conduct nevertheless cannot be excused as an isolated instance of poor judgment.

Under OAR 471-030-0038(1)(d)(D), acts which create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and are not considered isolated instances of poor judgment. At hearing, claimant's manager testified, "[I]f [claimant] didn't bring this to our attention, you know, we could think, has it happened in the past? Will it happen in the future?" Transcript at 10–11. This suggests that the employer was motivated, at least in part, to discharge claimant because they were concerned that they could no longer trust claimant. Any reasonable employer in similar circumstances would conclude similarly. When faced with her own negligent failure to properly post notices to the tenants, claimant, instead of admitting her mistake and seeking her manager's help to mitigate the issue, instead took actions which were apparently intended to cover up her mistake. Because the employer could not reasonably trust that claimant would refrain from doing so again in the future, claimant's dishonest conduct created an irreparable breach of trust in the employment relationship. As such, claimant's conduct cannot be excused as an isolated instance of poor judgement, and claimant therefore was discharged for misconduct.

For the above reasons, claimant was discharged for misconduct, and therefore is disqualified from receiving unemployment insurance benefits effective September 7, 2025.

DECISION: Order No. 25-UI-314043 is affirmed.

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

DATE of Service: <u>January 27, 2026</u>

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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