

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0757

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 8, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and that claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0012657017). The employer filed a timely request for hearing. On November 19, 2025, ALJ Franco conducted a hearing, and on November 20, 2025, issued Order No. 25-UI-311637, affirming decision # L0012657017. On December 3, 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.

FINDINGS OF FACT: (1) Homestead Log Homes employed claimant, most recently as a lead carpenter, from July 14, 2014 until June 27, 2025.

(2) Claimant was a long-time employee of the employer. As of June 2025, claimant earned \$28.50 per hour and worked 40 hours per week with occasional opportunities to work overtime. Claimant needed more income to support his family and desired to receive a pay raise from the employer.

(3) On a date close in time to June 24, 2025, a prospective employer offered claimant a job. The offered job would pay the same wage as claimant's job for the employer except that on certain government projects, the job would pay a prevailing wage of \$67.80 per hour. Claimant did not accept the job, but

intended to let management know that he had been offered the job to encourage the employer to give him a pay raise.

(4) On June 24, 2025, claimant told his foreman that he had been offered the job from the prospective employer, and that he was not sure whether he would take it. Claimant mentioned the job offer to the foreman hoping that doing so would prompt the employer's owner to give him a pay raise. Over the next few days, the foreman asked claimant several times whether claimant planned to take the job, and claimant told the foreman that he was not sure what he would do.

(5) The foreman told the owner, inaccurately, that when he spoke to claimant, claimant had given a two-weeks' notice of his intent to resign to take the job with the prospective employer. Operating under the misunderstanding that claimant had given notice of intent to resign, the owner thought that if claimant remained working during a notice period, it would harm workplace morale because other workers would learn that claimant was leaving for a better paying job. The owner decided not to let claimant continue working during the notice period he mistakenly believed to be occurring, and prepared a final paycheck to give to claimant.

(6) On June 27, 2025, the owner met with claimant. The owner asked claimant if he was going to take the job with the prospective employer, and claimant responded that he was considering doing so. The owner then said, "I hate to see you go," handed claimant his paycheck, and told claimant to "finish [his] day out." Transcript at 15.

(7) Thereafter, claimant left the workplace and never worked for the employer again. On June 30, 2025, the owner texted claimant, asking that claimant meet to potentially "work something out." Transcript at 7. Claimant declined to meet with the employer, texting back that he had "already moved on." Transcript at 7.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship.

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).

The work separation was a discharge that occurred on June 27, 2025. On that date, claimant was willing to continue working for the employer for an additional period of time, but the owner's actions and statements show that the employer was not willing to allow claimant to do so. Specifically, on that day, the owner asked claimant if he was going to take the job with the prospective employer, to which claimant responded merely that he was considering doing so. Despite claimant having not confirmed that he intended to leave employment, the owner gave claimant his final paycheck, stated, "I hate to see you go," and told him to "finish [his] day out." Transcript at 15. In so doing, the owner severed the employment relationship.

The owner and claimant each testified at hearing and their respective accounts of what occurred during the June 27, 2025 meeting differed. The owner testified that he understood from the foreman that claimant had given his two-weeks' notice, and stated that during the June 27, 2025 meeting, he told claimant, "I heard you're leaving" to which claimant responded, "yeah." Transcript at 6-7. In contrast, claimant testified that he had merely told the foreman that he was considering the job offer and was not sure what he would do. Transcript at 15. Claimant further testified that during the June 27, 2025 meeting, the owner asked him if he was going to take the offered job, and he responded only that he was considering doing so. Transcript at 15. Claimant testified that the owner then stated, "I hate to see you go," handed him his paycheck, and told him to "finish [his] day out." Transcript at 15.

As to what claimant told the foreman, claimant's firsthand testimony is entitled to more weight than the hearsay evidence of what the owner testified he was told by the foreman. Therefore, the weight of the evidence favors claimant's account that he told the foreman merely that he was considering the job offer and was not sure what he would do. The facts of this decision have therefore been found in accordance with claimant's account as to what claimant told the foreman regarding the job offer.

As to what was said during the meeting between claimant and the owner, their respective accounts are almost equally balanced. However, the weight of the evidence tips slightly in favor of claimant's account. The record shows that the owner was operating under the mistaken belief, based on inaccurate information from the foreman, that claimant had given two weeks' notice of his intent to resign. This led the owner to prepare claimant's final paycheck, and to be inclined to end claimant's employment, rather than let claimant work during any notice period, to avoid harming workplace morale. With his expectations set by the foreman's inaccurate information, it is plausible that the owner interpreted claimant's comment during the meeting as an unequivocal statement that claimant was taking the offered job even though claimant said that he was merely considering the offer. Further, claimant's account that he told the employer merely that he was considering the job offer is reliable because it is consistent with what the record shows he had already told the foreman. The facts of this decision have therefore been found in accordance with claimant's account as to what was said during the June 27, 2025 meeting.

Thus, the owner's act of giving claimant his final paycheck on June 27, 2025 was the first unequivocal act that evinced an intent to sever the employment relationship, and the work separation was a discharge. The employer's efforts to meet with claimant on June 30, 2025 are immaterial because the employment relationship had already ended by that point. For these reasons, the work separation was a discharge that occurred on June 27, 2025.

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).

The employer discharged claimant, but not for misconduct. The employer discharged claimant because they mistakenly believed that he had given two weeks' notice of his intent to resign, and they wished to avoid any harm to workplace morale that might result from other workers learning that claimant was leaving for a better paying job.

The employer failed to show that claimant's conduct violated any reasonable employer policy. Claimant had not given notice of intent to resign and was unsure as of the date of the discharge whether he would take the job with the prospective employer. Claimant's conduct of telling the employer that he was considering the offer from the prospective employer was not a willful or wantonly negligent violation of the standards of behavior the employer had a right to expect. Even if claimant had tendered a two-weeks' notice, the employer did not establish that a willful or wantonly negligent violation of a reasonable employer policy results when an employee gives notice of their intent to resign.

Accordingly, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-311637 is affirmed.

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

DATE of Service: January 13, 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 Tự 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 – សេចក្តីសម្រាប់នាមដានដល់ប៉ះពាល់ដល់អត្ថប្រយោជន៍ត្រានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រាប់នេះ សូមទាក់ទងគណៈកម្មការខ្លួនរបស់ការងារភ្នាម។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រាប់នេះទេ លោកអ្នកអាចជាក់ពាក្យបីដែលសំច្បាប់នាមនានការពិនិត្យឱ្យក្នុងវិញ្ញាបាមួយគុណខ្លួនរណ៍ដើម្បី Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសាសនាឌានីខាងចែងបញ្ចប់នៃសេចក្តីសម្រាប់នេះ។

Laotian

ເອີໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທິບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການທ່ວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນຫັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຄຳຕັດສິນນີ້, ທ່ານສາມາດຢືນຄໍາຮ້ອງຂໍການທີບຫວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໄດ້ປະຕິບັດຕາມຄໍາແນະນຸງໃຫ້ປະກໄວ້ຢ່າງຍໍາຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطلة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للبرلمانية القانونية بمحكمة الاستئناف بأورغون وذلك باتخاذ 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، ممکن است از استفاده از دستور العمل موجود در پیاز آن، از دادگاه تجدید نظر اور گان در خواست 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.