

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0031**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 29, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for a disqualifying act and was therefore disqualified from receiving unemployment insurance benefits effective August 3, 2025 (decision # L0013189522).<sup>1</sup> Claimant filed a timely request for hearing. On December 24, 2025, ALJ Adamson conducted a hearing, and on December 30, 2025 issued Order No. 25-UI-315585, reversing decision # L0013189522 by concluding that claimant was discharged, but not for a disqualifying act, and was not disqualified from receiving benefits based on the work separation. On January 5, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Harney Rock & Paving Co. employed claimant as a loadout operator from March 17, 2017 until August 6, 2025.

(2) The employer had a written policy prohibiting employees from working while under the influence of alcohol or illegal drugs. Claimant had access to updated versions of this policy throughout his employment. The written policy required that an employee involved in an accident resulting in injury or property damage submit to testing for the use of alcohol or illegal drugs, administered at the worksite by the employer's staff, at no cost to the employee. The written policy did not provide for further testing if a test result was found to be invalid, inconclusive, or positive. However, in practice, if such a result occurred, the employer required that the employee be driven to a third-party testing facility and submit to another test there, at no cost to the employee.

(3) On August 5, 2025, claimant accidentally caused substantial property damage to an object in the employer's parking lot and immediately reported this to the employer. The employer then required

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<sup>1</sup> Decision # L0013189522 stated that claimant was denied benefits from August 3, 2025 to August 15, 2026. However, decision # L0013189522 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 3, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

claimant to submit a urine sample for testing under the terms of the written policy. Claimant provided the sample to the employer's staff at the worksite as directed, but the results were deemed inconclusive because the temperature of the sample was too low at the time it was tested. The employer did not request an additional sample from claimant at the worksite.

(4) Claimant was then driven to a third-party testing facility and directed to provide another urine sample there. A female employee of the testing facility told claimant that he was required to partially disrobe in front of her and allow her to watch him urinate into the sample collection cup. Claimant found this procedure objectionable and refused to provide a urine sample under those conditions. Claimant was driven back to the worksite and left work for the day.

(5) On August 6, 2025, the employer discharged claimant for having refused to provide a urine sample at the third-party testing facility the previous day. The employer had concerns about claimant having been late for work on three recent occasions, but did not plan to discharge him for that reason, and would not have discharged him on August 6, 2025 had he provided a urine sample at the third-party facility that yielded a negative result.

**CONCLUSIONS AND REASONS:** Claimant was discharged, but not for a disqualifying act.

A claimant is disqualified from receiving benefits if they have committed a disqualifying act as described in ORS 657.176(8) or (9). ORS 657.176(2)(h). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;

(B) Fails or refuses to take a drug, cannabis or alcohol test as required by the employer's reasonable written policy;

(C) Refuses to cooperate with or subverts or attempts to subvert a drug, cannabis or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:

(i) Refusal or failure to complete proper documentation that authorizes the test;

(ii) Refusal or failure to sign a chain of custody form;

(iii) Presentation of false identification;

(iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is identified by a testing facility; or

(v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen;

\* \* \*

OAR 471-030-0125 (January 11, 2018)<sup>2</sup> states:

\* \* \*

(2) Definitions. For the purposes of this rule:

\* \* \*

(b) For purposes of ORS 657.176(9), an individual “fails or refuses to take” a drug, cannabis, or alcohol test when the individual does not take the test as directed by the employer in accordance with the provisions of an employer’s reasonable written policy or collective bargaining agreement.

\* \* \*

(3) For purposes of ORS 657.176(9), (10), and 657.176(13), a written employer policy is reasonable if:

(a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and

(b) The policy does not require the employee to pay for any portion of the test; and

(c) The policy has been published and communicated to the individual or provided to the individual in writing; and

(d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:

(A) Probable cause for requiring the individual to submit to the test; or

(B) The policy provides for random, blanket or periodic testing.

(4) Probable Cause for Testing. For purposes of ORS 657.176(9), an employer has probable cause to require an employee to submit to a test for drugs, cannabis, alcohol, or a combination thereof if:

(a) The employer has, prior to the time of the test, observable, objective evidence that gives the employer a reasonable basis to suspect that the employee may be impaired or affected by drugs, cannabis, or alcohol in the workplace. Such evidence may include, but is not limited to, abnormal behavior in the workplace, a change in productivity, repeated tardiness or absences, or behavior which causes an on-the-job injury or causes substantial damage to property; or

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<sup>2</sup> The citations in this rule to ORS 657.176(9), (10), and (13) have not yet been updated to account for recent legislative changes which renumbered certain paragraphs under ORS 657.176. Therefore, any reference under the rule to ORS 657.176(9), (10), or (13) should be read as ORS 657.176(8), (9), or (12), respectively.

(b) The employer has received reliable information that a worker uses or may be affected by drugs, cannabis, or alcohol in the workplace; or

(c) Such test is required by applicable state or federal law, or an applicable collective bargaining agreement that has not been declared invalid in final arbitration; or

(d) Such test is required or allowed pursuant to a reasonable agreement.

\* \* \*

(6) For purposes of ORS 657.176(9), (10), and (13), no employer policy is reasonable if the employer does not follow their own policy.

\* \* \*

(9) The employee is discharged or suspended for committing a disqualifying act if:

(a) The employee violates or admits a violation of a reasonable written employer policy governing the use, sale, possession or effects of drugs, cannabis, or alcohol in the workplace; unless in the case of drugs the employee can show that the violation did not result from unlawful drug use.

(b) In the absence of a test, there is clear observable evidence that the employee is under the influence of alcohol in the workplace.

(10) For the purposes of ORS 657.176(9) and (10):

(a) Testing for drugs, cannabis, or alcohol must be conducted in accordance with ORS 438.435.

\* \* \*

(11) If the employer discharges or suspends an employee because of use, sale, or possession of drugs, cannabis, or alcohol in the workplace and the employer has no written policy regarding the use, sale, or possession of drugs, cannabis, or alcohol in the workplace, the provisions of OAR 471-030-0038 apply.

The employer discharged claimant for failing to submit to a second urine test for evidence of drug or alcohol use at the third-party testing facility on August 5, 2025. Although the employer also had concerns about claimant's punctuality on other recent occasions, one of the employer's witnesses testified that they did not intend to discharge claimant for that reason, and that claimant would not have been discharged on August 6, 2025 had he not refused to submit to further testing at the third-party facility the previous day. Transcript at 16-17. The events of August 5, 2025 are therefore the proper focus of the discharge analysis. *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 alleged 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).

The employer had a written policy that reasonably prohibited employees from working while under the influence of alcohol or illegal drugs, and provided for “probable cause” testing within the meaning of ORS 657.176(8)(a). The employer had probable cause under OAR 471-030-0125(4)(a) to require claimant to submit to testing on this occasion in accordance with the written policy because he engaged in behavior that caused substantial damage to property. Claimant was directed to provide a urine sample at the worksite, in accordance with the written policy, and claimant complied. The test yielded an inconclusive result due to the temperature of the sample being too low at the time it was tested. Claimant testified that there was some delay in processing the sample because the volume of urine in the sample cup he provided to testing staff was initially determined to be insufficient, and he was directed to provide additional urine in the same cup, which he then did. Transcript at 19. Claimant suggested that the decrease in temperature was due to the amount of time that elapsed between when the initial portion of the sample was deposited in the cup and when the full sample was tested. Transcript at 19-20. The employer did not assert, and the record does not otherwise suggest, that the test yielded an inconclusive result due to subversion or attempted subversion of the test, as defined in ORS 657.176(8)(a)(C).

Until this point, the employer had followed the terms of their written policy in requiring claimant to submit to testing, and claimant complied. However, the employer thereafter required claimant to be driven to a third-party testing facility to submit a second urine sample. A witness for the employer testified that this procedure was not part of the written policy and had not previously been disclosed to claimant. Transcript at 12, 14. Therefore, under OAR 471-030-0125(6), because the employer did not follow their own written policy, the policy could no longer be deemed reasonable. As such, when claimant refused to provide an additional urine sample at the third-party facility, the refusal did not violate a reasonable written drug and alcohol use policy within the meaning of the statute and rule. Accordingly, claimant was not discharged for a disqualifying act as described in ORS 657.176(8) or (9).

For these reasons, claimant was discharged, but not for a disqualifying act, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 25-UI-315585 is affirmed.

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

**DATE of Service:** February 18, 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 desisyong ito.

## 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 محكمة 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**  
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