

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0033**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 18, 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 6, 2025 (decision # L0013077824).<sup>1</sup> Claimant filed a timely request for hearing. On December 16, 2025, ALJ Janzen conducted a hearing, and on December 17, 2025 issued Order No. 25-UI-314597, affirming decision # L0013077824. On January 5, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's arguments, submitted on January 12 and 13, 2026, each contained 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. 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 claimant's arguments that were based on the hearing record.

The parties may offer new information, such as that contained in claimant's written arguments, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) Sweet Briar Nursing Center, LLC employed claimant as a certified nursing assistant (CNA) at a nursing home from January 4, 2023 through July 8, 2025.

<sup>1</sup> Decision # L0013077824 stated that claimant was denied benefits from July 6, 2025 to August 15, 2026. However, decision # L0013077824 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 6, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(2) State law required each patient room at the employer's facility to be equipped with a call light button that was accessible to the patient at all times. When the button was depressed, it would activate a light and buzzing noise at the nurse's station until depressed again. The employer expected assigned employees to respond to an activated light within ten minutes. Claimant understood these policies, but in practice, employees routinely moved call light buttons temporarily out of reach of a patient when that patient was repeatedly activating it without reason. The employer's management was unaware that this practice was occurring.

(3) On July 3, 2025, claimant reported for her overnight shift and discovered that no other CNAs had shown up for work, leaving her to provide CNA care for 22 patients. Claimant believed that applicable law set staffing caps at 17 patients per CNA, and felt the understaffing that night made the situation "quite overwhelming." Transcript at 11.

(4) Shortly after claimant began her shift, a patient repeatedly activated his call light, and each time claimant responded, would request medication. Claimant told the patient each time that she could not dispense medication to him. Claimant relayed the request three times to the on-duty nurse, who was responsible for dispensing medication, but the nurse ignored claimant's requests to discuss the matter with the patient each time.

(5) Claimant felt that the patient's repeated and unnecessary activations of the call light were interfering with her obligations to other patients, and moved the patient's button out of his reach. Claimant believed that doing so would cause the nurse to respond to the patient and discuss his medication request. Within five minutes, claimant placed the button in a location where it was accessible to the patient. The employer learned of this within a day and suspended claimant from work.

(6) On July 7 or 8, 2025, the employer discharged claimant for having temporarily made the call light button inaccessible to the patient on July 3, 2025. The matter was reported to relevant state regulators. Claimant had no other history of discipline with the employer.

**CONCLUSIONS AND REASONS:** Order No. 25-UI-314597 is set aside, and the matter remanded for further development of the record.

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).

OAR 411-087-0440 (October 1, 1993), regulating nursing facilities, provides:

\* \* \*

(2) Nurse Call System:

(a) Resident Rooms. Each resident room shall be served by an electric nurse call system. Each resident shall have a nurse call button which may be easily located to allow the resident to summon nursing staff. Two call buttons serving adjacent beds may be served by one calling station;

(b) Bath, Toilet and Shower Rooms. Each bath, toilet and shower room must have an electric call system;

(c) Nurses' Station. The nurse call system shall register all calls at the nurses' station by both a visible and audible signal. The nurse call system shall also register a visible signal in the corridor adjacent to the door of the room from which the signal originated:

(A) The visible signal shall remain on until turned off at the location where the signal originated;

(B) In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections.

\* \* \*

The employer discharged claimant for temporarily moving a call light button out of reach of a patient. The employer reasonably expected that employees would not interfere with a patient's access to the button, which was legally mandated. Claimant was aware of this expectation and admitted to moving the button, but asserted that employees routinely moved it out of a patient's reach temporarily when the patient's repeated and unnecessary use of it interfered with their other duties, "knowing that that is not what to do." Transcript at 13. The employer's witness testified that the employer had not received any reports of other employees doing this. Transcript at 17. However, even if other employees did routinely engage in such behavior, claimant's testimony demonstrated that she knew that doing so violated policy. Claimant therefore made a conscious decision to move the button, knowing that her actions would likely result in a violation of the employer's policies, and acted with disregard for the consequences of her actions. Therefore, claimant violated the policy with at least wanton negligence.

The order under review concluded that claimant's movement of the button was misconduct, and that it could not be excused as an isolated instance of poor judgment because it exceeded mere poor judgment.

Order No. 25-UI-314597 at 3. The record as currently developed does not support that claimant's conduct necessarily exceeded mere poor judgment, and further development on that issue is warranted.

Claimant testified that after starting her shift, the patient involved was activating the call button "nonstop" to request medication. Transcript at 10-11. As claimant was not responsible for administering medication, she relayed the patient's request to the on-duty nurse three times. Claimant expected the nurse to determine when the patient was due to be given medication and to speak with him about it, but the nurse "refused to leave the nurse station to inform the resident that he was not scheduled to receive any medications." Transcript at 11. After the nurse rebuffed claimant's third request to speak with the patient, claimant decided to move the call button. Claimant testified regarding that decision:

The ALJ: So where did you put the call light?

Claimant: So I hung it up in the room so that I could get the nurse in the room with me to let him know that he could not have his medications because she was not looking at the charting system to find out when his medications were due.

The ALJ: So are the residents supposed to have the call lights available to them, like, within reach?

Claimant: Yes. And I took it so that I could get the nurse. I hung it up on the wall.

The ALJ: Could he get to it? Could the resident get to it from there?

Claimant: No, not at the time, no, because I was trying to get the nurse.

The ALJ: Okay. And so what happened next?

Claimant: I informed the resident the nurse would be in there shortly, multiple times, and she never came. So I continued my duties after I gave him this call light back.

The ALJ: When did you give him the call light back?

Claimant: Within about five minutes, if that. If I had a second person, it wouldn't have been so overwhelming. But, you know, but the refusal of the nurse to even speak with the resident had made an impact on this, and that is her responsibility to discuss medication scheduling and distribution. The call light was in the room, and when I put it back, it was in arm's reach.

\* \* \*

The ALJ: So, if you -- if you gave it back to him within five minutes, again, why did you need to take it away at all?

Claimant: So that I could get the nurse down there to explain the situation.

The ALJ: Why did you need to take it away from him to get the nurse down there to explain the situation?

Claimant: Because this nurse that we had had that night was very -- did not like the call lights on for an amount of time. She did not like it.

The ALJ: What do you mean?

Claimant: She did not like hearing the buzzing going on, on the box.

Transcript at 11-14. This explanation suggests that the call light may have been activated the entire time it was out of the patient's reach, and that claimant may have waited with or near the patient for the approximately five minutes it was out of his reach in order to speak with the nurse if the nurse came. If so, the temporary movement of the button within the room may have had no practical effect on the patient's ability to summon assistance during that period. Such a circumstance would weigh in mitigation when analyzing whether claimant's conduct exceeded mere poor judgment.

On remand, inquiry should be made into whether the call light was activated during the time the button was out of the patient's reach, and whether claimant remained close enough to observe whether the patient needed immediate assistance during all or part of that period. Additionally, inquiry should be made into the outcome of any reports or complaints to state regulators regarding the incident. Based on the information developed on remand, claimant's actions should be analyzed to determine whether they exceeded mere poor judgment, or could be excused as an isolated instance of poor judgment.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant's actions exceeded mere poor judgment, or could be excused as an isolated instance of poor judgment, which is not misconduct, Order No. 25-UI-314597 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

**DECISION:** Order No. 25-UI-314597 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** February 17, 2026

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-314597 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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