

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0034

Affirmed
Request to Reopen Allowed
Disqualification

PROCEDURAL HISTORY: On February 11, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0009253995). On March 3, 2025, decision # L0009253995 became final without the employer having filed a request for hearing. On March 4, 2025, the employer filed a late request for hearing that was treated as timely.

On June 24, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 2, 2025. On July 2, 2025, the employer failed to appear at the hearing, and on July 3, 2025, ALJ Rackstraw issued Order No. 25-UI-296671, dismissing the employer's request for hearing due to their failure to appear. On July 14, 2025, the employer filed a timely request to reopen the hearing.

On October 2, 2025, and continued to November 10, 2025 and December 8, 2025, ALJ Honea conducted a hearing, and on December 16, 2025 issued Order No. 25-UI-314516, allowing the employer's request to reopen the hearing, canceling Order No. 25-UI-296671, and reversing decision # L0009253995 on the merits by concluding that claimant was discharged for misconduct, and therefore disqualified from receiving benefits effective December 29, 2024.¹ On January 5, 2026, claimant filed an application for review of Order No. 25-UI-314516 with the Employment Appeals Board (EAB).

¹ The order under review concluded that claimant was disqualified from benefits effective January 3, 2025. Order No. 25-UI-314516 at 6. This date appears to be error, however, as January 3, 2025 was a Friday, and benefit denials begin on the Sunday of the effective week. As such, it is presumed that the order under review intended to disqualify claimant from benefits effective December 29, 2024.

WRITTEN ARGUMENT: Claimant did not state 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 contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant’s reasonable control prevented them 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).

Additionally, claimant asserted in her written argument that the hearing proceedings were unfair or the ALJ was biased. In particular, claimant asserted that she was “highly concerned about [the] impartiality of [the] ALJ after [the] hearing of November 10, 2025.” Claimant’s Written Argument at 1. Claimant’s belief in the ALJ’s bias against her was based on concerns such as the method of service by which the employer served their exhibit on her; the ALJ’s findings that claimant failed to follow her supervisor’s directions; and the ALJ’s having disregarded events, such as claimant’s union having filed grievances on her behalf against the employer, as not relevant to the determination of whether claimant’s discharge was for misconduct. Claimant’s Written Argument at 2. These examples do not show that the ALJ was biased against claimant. Instead, they show that the ALJ made appropriate determinations with which claimant disagreed. 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) (August 1, 2004).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-314516 allowing the employer’s request to reopen the hearing. That part of Order No. 25-UI-314516 is **adopted**. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant, most recently as a clerk within the specialty cheese kiosk (“the kiosk”) of one of their grocery stores, from May 9, 2017 through January 3, 2025. Claimant began working in the kiosk in 2022. Claimant’s immediate supervisor in the kiosk was the “cheese master.” December 8, 2025 Transcript at 17.

(2) The employer maintained a policy forbidding employees from engaging in “[i]nsubordination,” defined to include “willfully disobeying the instructions of an authorized person-in-charge, or disrespectful conduct toward a supervisor or person-in-charge.” Exhibit 1 at 9. The employer provided claimant with a copy of this policy on at least one occasion. Claimant signed acknowledgement of her receipt of the policy most recently on September 9, 2024.

(3) The employer also maintained policies specifically applicable to the kiosk. These included the requirement to wear a specific uniform (a red jacket) while running a product demonstration (“demo”); guidelines on which cutting implements to use for which types of cheese; cleaning procedures for cutting implements and other equipment; and food safety procedures, such as the requirement to change gloves between cutting different types of cheese. December 8, 2025 Transcript at 22; Exhibit 1 at 21. Claimant was familiar with and understood these policies.

(4) On August 16, 2024, claimant was working with the cheese master, who directed claimant to wrap and label cut pieces of cheese. Claimant did not respond to the cheese master or do as she was directed. The cheese master repeated herself twice, with the same results. Finally, the cheese master gave

claimant the direction a fourth time, at which point claimant “hesitated, but then started wrapping the cheese.” Exhibit 1 at 6. Afterwards, two members of management spoke with claimant about the incident and explained to her that “not following direction is insubordination,” and then suspended her because they had spoken to her about similar incidents a few days prior. Exhibit 1 at 6.

(5) On September 19, 2024, one of claimant’s coworkers, “T,” witnessed claimant taking off her disposable gloves after cutting one type of cheese, setting them aside, and then later putting them back on to cut a different type of cheese. On September 20, 2024, T reported this to the employer, and also stated that he had “seen her do this on at least two other days.” Exhibit 1 at 14.

(6) On September 21, 2024, claimant was assigned to run a product demo during her shift. As T and the cheese master were preparing samples for the demo, the cheese master asked claimant if she had brought her red jacket to work. Claimant told the cheese master that she did not have the jacket and, after an exchange about the requirement to wear the jacket when running a demo, claimant complained about being the only employee to run demos. When the cheese master corrected claimant on the last point, as all employees were required to run demos, claimant became upset and called the cheese master “a liar.” Exhibit 1 at 13. After a tense further exchange between the two, the cheese master referred claimant to speak to one of the members of management about the matter. Claimant initially refused to do so, but, after the cheese master spoke to them, two members of management approached claimant at the kiosk and asked her about the red jacket. Claimant admitted that her jacket was at home and at the managers’ direction, clocked out, went home, retrieved the jacket, and then returned to work to run the demo.

(7) On December 15, 2024, the cheese master sent an email to the store’s human resources (HR) manager, discussing concerns she had about claimant’s conduct on the previous day. This conduct involved claimant ignoring the cheese master’s attempts to get claimant’s attention and assign her work tasks. The cheese master also noted in the email that, after an exchange in which claimant “became very agitated” at what the cheese master asked her to do, the cheese master stated, “...I do not understand why you have a problem with me or with the things I ask you to do...” and that claimant responded, “[Y]ou don’t know why, really?” but did not offer an explanation. Exhibit 1 at 25.

(8) On December 21, 2024, claimant was working with the cheese master and two other employees in the kiosk while the store was busy due to the upcoming holiday. At one point during claimant’s shift, a customer approached and requested a piece of an expensive semi-soft goat cheese that had not yet been cut or stocked. The cheese master directed claimant to cut up the last wheel of the cheese so that she could wrap up a piece for the customer. Claimant began to comply, but then found that all of the wire cheese slicers—the correct piece of equipment to cut this type of cheese wheel—were dirty and sitting in the sink. Claimant reported this to the cheese master, who then directed claimant to wash and sanitize one of the slicers so that she could cut into the wheel. Claimant refused to do so, citing the fact that she had not been the one to dirty the slicer. The cheese master reiterated her instructions to claimant, but claimant continued to refuse, leading the cheese master to step away and speak to a manager.

(9) When the cheese master returned to the kiosk, she found claimant cutting the wheel of cheese with a large knife that was not suitable for the task and was causing damage to the wheel. The cheese master told claimant to stop cutting the wheel with the knife “a minimum of four times,” but claimant refused to comply. December 8, 2025 Transcript at 19. Instead, claimant continued to cut into the wheel with the

knife, causing further damage to the wheel and requiring the employer to write off some of the cheese as a loss.

(10) On December 23, 2024, as a result of claimant's conduct on December 21, 2024, the employer suspended claimant pending an investigation into the matter. On January 3, 2025, the employer discharged claimant because she refused to comply with the cheese master's instructions during the December 21, 2024 incident.

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 because she refused to comply with the cheese master's instructions on December 21, 2024. These instructions were, first, to clean a wire cheese slicer so that claimant could cut a wheel of cheese for a customer; and then, once claimant had refused to do so, to stop cutting the wheel of cheese with a knife that was not suited for the purpose and was damaging the product. This violated the employer's insubordination policy, as claimant willfully and repeatedly disobeyed the instructions of her supervisor; violated the specialty cheese kiosk's policy regarding the type of equipment to be used on the cheese wheel; and again violated the insubordination policy by refusing to stop cutting the wheel with a knife after the cheese master repeatedly told her to stop.

At the time of the incident, claimant told the cheese master that she would not wash the correct piece of equipment, a cheese slicer, because she was not the one who dirtied it. At hearing, claimant suggested that this was not her main concern with using the slicer, but rather that it would take too much time to properly wash, sanitize, and air-dry the slicer, approximately 20 to 25 minutes by her estimate, and she did not want to keep the customer waiting that long. December 8, 2025 Transcript at 33, 56–57. Likewise, while the cheese master testified at hearing that claimant could have completed the washing and drying in only a few minutes if she had dried the slicer with paper towels, claimant asserted that the

employer's rules did not permit drying equipment with paper towels (as opposed to air drying). December 8, 2025 Transcript at 58, 56–57.

In fact, the employer's rules state, in relevant part: "All tools must be fully submerged in sanitizer solution and left to air dry[.]" Exhibit 1 at 24. The rules do not state whether or not paper towels may be used to dry equipment, nor do they include any explanation as to why any drying method other than air drying would be unacceptable. Exhibit 1 at 24. Furthermore, it is not evident from the record that using clean, disposable paper towels to dry a piece of equipment used to prepare food would be inherently dangerous or out of keeping with best sanitation practices for food-preparation equipment. Therefore, claimant's objections notwithstanding, it was reasonable for the cheese master to direct claimant to clean and towel-dry one of the cheese slicers so that she could correctly cut up the cheese that the customer had requested. It was, likewise, reasonable for the cheese master to direct claimant to stop cutting the cheese with the knife she was using, as the use of that knife was not permitted under the rules and, moreover, was damaging the product. In sum, the employer's insubordination policy, as applied to the cheese master's instructions on December 21, 2024, was reasonable. The rule forbidding the use of a knife to cut the cheese wheel as claimant had done was also reasonable, given the damage it could and did cause. Therefore, claimant violated the employer's reasonable expectations that day with at least wanton negligence.

Claimant's conduct on December 21, 2024 cannot be excused as an isolated instance of poor judgment because the record shows that claimant had engaged in other willful or wantonly negligent conduct in the months preceding the incident, and her conduct that day therefore was not isolated.

First, claimant violated the employer's expectations willfully or with wanton negligence on August 16, 2024, when she repeatedly ignored the cheese master's directions to cut and wrap cheese. The record indicates that claimant had engaged in similar behavior on August 12, 2024, and that two managers had told claimant after that encounter that she was required to follow the cheese master's directions. *See* Exhibit 1 at 5. The record further indicates that claimant asserted after both of these incidents that she failed to initially follow the cheese master's directions because she had not heard what the cheese master said to her. *See* Exhibit 1 at 5–6. Claimant likewise testified to the same at hearing. *See* December 8, 2025 Transcript at 37–38. While this explanation is possible, it is implausible.

Throughout the record, claimant's behavior consistently demonstrated an unwillingness to follow the cheese master's directions. Additionally, the record shows that claimant had some personal frustration with the cheese master, as evidenced by the exchange between the two on December 14, 2024. It is, likewise, generally implausible that claimant would repeatedly have been unable to hear directions given to her by a person working with her in a kiosk. Thus, the record shows that, more likely than not, claimant had been deliberately ignoring the cheese master's directions on the occasions mentioned. As such, claimant's conduct on August 16, 2024, after she had been recently warned that such conduct was considered insubordination, constituted a willful violation of the employer's expectations that claimant follow her supervisor's instructions.

Next, claimant's reuse of disposable gloves on September 19, 2024 violated the employer's rule requiring kiosk employees to change their gloves between handling different types of cheese, as claimant had been observed using a pair of gloves for one type of cheese, setting the gloves aside, and later reusing them for a different type of cheese. At hearing, claimant admitted that she had sometimes

reused pairs of gloves; but suggested that she had only done so when engaging in cleaning activities, and that a manager was aware of this habit. December 8, 2025 Transcript at 47. Claimant further testified that she understood that she was permitted to reuse gloves if she was cutting the same type of cheese, and that she was required to change them when switching to handling a different type of cheese. December 8, 2025 Transcript at 47–48. Employer, however, testified that on multiple occasions claimant laid gloves out to reuse, that claimant was counseled not to reuse gloves, and despite this warning was seen on video failing to throw gloves away and reuse them. December 8, 2025 Transcript at 25-26. Because claimant was aware that this was not permitted under the employer’s rule, claimant violated the rule with at least wanton negligence.

Finally, claimant violated the employer’s expectations with at least wanton negligence on September 21, 2024, when she was scheduled to run a product demo but failed to bring her required red jacket to work. The employer’s policies required her to wear her red jacket while running demos, which claimant knew. Claimant did not offer an explanation at hearing for why she failed to bring it to work that day. However, the record suggests that she did so intentionally. The employer’s exhibit contains a contemporaneously-written email from the cheese master to the HR manager that day, detailing the incident. In the email, the cheese master reported that claimant had first told her that she did not have her red jacket; and then, after the cheese master reiterated the requirement, claimant stated, “[I]f I don’t wear my Red Jacket then I don’t have to do Demo’s,” and subsequently complained about being the only employee who was required to run demos. Exhibit 1 at 13. This indicates that claimant more likely than not intentionally left the jacket at home that day in the hope that she would not have to run the demo because she did not have it with her. Thus, claimant willfully violated the employer’s expectations in this incident as well.

In sum, the record shows that claimant engaged in a pattern of willful or wantonly negligent violations of the employer’s expectations. As such, the final incident on December 21, 2024 was not an isolated instance of poor judgment, but was instead misconduct. Therefore, claimant was discharged for misconduct, and is disqualified from receiving unemployment insurance benefits effective December 29, 2024.

DECISION: Order No. 25-UI-314516 is affirmed.

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

DATE of Service: February 19, 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.

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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 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 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.

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