

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0057

Reversed
Disqualification

PROCEDURAL HISTORY: On October 23, 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 # L0013567924). The employer filed a timely request for hearing. On January 8, 2026, ALJ Andersen conducted a hearing, and on January 12, 2025 issued Order No. 26-UI-316701, affirming decision # L0013567924. On January 14, 2026, the employer filed an application for review of Order No. 26-UI-316701 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) C & K Market, Inc. employed claimant, most recently as the manager of their grocery store's meat department, from April 29, 2020 through September 4, 2025.

(2) Claimant was diagnosed with post-traumatic stress disorder (PTSD), anxiety, and depression, for which he was receiving care.

(3) The employer maintained a policy which prohibited employees from, in relevant part, "threat[s] to [*sic*] physical violence and harassing another employee." Transcript at 15. The employer provided claimant with a copy of this policy, which claimant signed upon receipt. Claimant also completed a training on "harassment, discrimination, and retaliation." Transcript at 15.

(4) On December 20, 2024, claimant used foul language when angrily yelling at a coworker, L, after she attempted to interrupt him while he was taking a telephone order from a customer. Afterwards, claimant approached the coworker in the department's meat cooler to apologize for yelling at her. However, because the two were alone in an enclosed space, the coworker felt unsafe during the encounter. On January 2, 2025, the employer issued claimant a written warning which required him, in relevant part, to "act professionally at all times with all of his co-workers," and that his "communication with his co-workers must be legitimate and professional." Exhibit 1 at 4.

(5) On August 30, 2025, claimant was mentally “in a very dark space . . . due to circumstances leading up to the day,” and had not slept or eaten much over the preceding days. Transcript at 18. That day, claimant, angry because he believed product had been misplaced, threw the “heavy plastic lid” of a meat storage container into the meat cooler. Transcript at 6. Claimant also “threw . . . metal sign holders . . . across his department.” Transcript at 7. No other employees were present in the areas when claimant threw these objects.

(6) Later on August 30, 2025, claimant spoke with his asked his department’s assistant manager to speak to him in the meat cooler regarding extra product they had on hand. The assistant manager observed that claimant seemed “distracted . . . and he seemed like he was on the verge of tears.” Exhibit 1 at 6. Claimant then told the assistant manager, “[I] would really like to hurt someone right now,” and walked out of the cooler. Exhibit 1 at 6. After a short while, the assistant manager asked claimant what he had meant by his last statement. Claimant replied that he was “not ‘mentally well’ and that he has not ‘received the help that he needs’” but would be seeing a therapist in a few days. Exhibit 1 at 6. The assistant manager then asked claimant if he should be fearing for his own safety. Claimant replied that the assistant manager was not on his “list,” and that claimant did not “have the balls to do anything to anyone.” Exhibit 1 at 6. Nevertheless, claimant told the assistant manager that he had slammed his fist on a table that day, as well as thrown the container lid, and that “he had thought about taking his ‘anger out on [L]’s tire.” Exhibit 1 at 6. After further discussion about claimant’s mental state, the assistant manager left the conversation and, after claimant went home, reported the matter to the store’s general manager.

(7) On the morning of September 1, 2025, the general manager met with claimant to speak about his conduct on August 30, 2025. During the meeting, claimant explained that “he was angry and his therapist had told him to find a physical release.” Exhibit 1 at 2. The general manager replied that she was “sure that was not what [the therapist] meant” and that claimant was “endangering others by his reckless behavior.” Exhibit 1 at 2. Claimant reiterated that he would never hurt another person. About two hours later, after initially requesting to continue working for the rest of the day, claimant asked the general manager for permission to go home. She granted permission, and claimant went home. Later that day, the general manager contacted the employer’s human resources (HR) department about the matter. After speaking to HR and the district manager, the general manager suspended claimant that day pending further investigation into the matter.

(8) On September 4, 2025, the employer discharged claimant due to his conduct on August 30, 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 his conduct on August 30, 2025, in which he threw a storage container lid and metal sign holders; “slammed” his fist on a table; and made statements to his assistant department manager which indicated that he wished to engage in physical violence and damage another employee’s property. The employer’s policy reasonably prohibited employees from engaging in threats of violence against other employees, or harassing other employees. As such, claimant’s conduct on August 30, 2025 violated those expectations. Further, because he had received a copy of the policy, had been trained on similar matters, and had received a warning in January 2025 requiring him to “act professionally at all times with all of his co-workers,” claimant knew or at least had reason to know that his conduct would probably violate these expectations.

The order under review thus correctly concluded that claimant’s conduct was at least a wantonly negligent violation of the employer’s standards of behavior. Order No. 26-UI-316701 at 3. Nevertheless, the order under review determined that claimant’s conduct was an isolated instance of poor judgment because, in relevant part, “[t]he employer failed to show an irreparable breach of trust occurred, or that a continued employment relationship was impossible, because the employer gave claimant the option to continue working after the incident had occurred.” Order No. 26-UI-316701 at 3. The record does not support this conclusion.

Instead, the record shows that claimant’s conduct made a continued employment relationship impossible. It is true that claimant continued to work for a brief period of time after the events of August 30, 2025. However, this fact merely shows that the employer took a brief time to confirm what happened and consider how to proceed before making the decision to discharge claimant. Notably, claimant only worked approximately two more hours for the employer after he met with the general manager on September 1, 2025. While he initially left the store of his own accord after that meeting, the employer suspended him later that day, and claimant remained suspended until he was discharged a few days later. As such, claimant’s brief continuation of work after the events of August 30, 2025 is not proof that a continued employment relationship was possible.

The record suggests that claimant’s conduct on August 30, 2025 was contributed to by claimant’s poor mental state at the time and, perhaps, was a misguided attempt to “to find a physical release” as his therapist had suggested. Whatever claimant’s intent, however, it can be reasonably inferred from the record that claimant’s conduct caused the assistant manager and other employees to fear that he might actually engage in acts of violence or property damage. Indeed, despite claimant’s assertions to the contrary, the employer had no way of reasonably knowing that claimant would not escalate matters further if he were to remain employed. Given the atmosphere of fear that this had the potential to cause

in the store, as well as the potential liability to the employer if claimant escalated on a future occasion, continuing to employ claimant was, for practical purposes, impossible. Because claimant's willful or wantonly negligent conduct made a continued employment relationship impossible, it exceeded mere poor judgment, and cannot be excused as an isolated instance of poor judgment. Therefore, claimant's conduct on August 30, 2025 was misconduct.

For the above reasons, claimant was discharged for misconduct, and is disqualified from receiving unemployment insurance benefits effective August 24, 2025.

DECISION: Order No. 26-UI-316701 is set aside, as outlined above.

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

DATE of Service: March 2, 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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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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