

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0067

Modified
Disqualification Effective November 2, 2025 (Week 45-25)

PROCEDURAL HISTORY: On November 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 from September 7, 2025 through October 10, 2026 (decision # L0014184823).¹ Claimant filed a timely request for hearing. On December 29, 2025, ALJ Naylor conducted a hearing at which the employer failed to appear, and on January 2, 2026 issued Order No. 26-UI-315976, modifying decision # L0014184823 by concluding that claimant was suspended from work for misconduct and therefore was disqualified from receiving benefits effective September 7, 2025 and until requalified by the Department. On January 16, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of documents claimant mailed to the Office of Administrative Hearings (OAH) on December 22, 2025, but were not processed by OAH in time to be admitted as an exhibit at hearing. This evidence has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she 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 with the

¹ Decision # L0014184823 stated that claimant was denied benefits from September 7, 2025 to October 10, 2026. However, decision # L0014184823 should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 7, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

exception of the documents contained in EAB Exhibit 1, did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090. EAB considered only the information received into evidence at the hearing and EAB Exhibit 1. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Evan Terrace SNF Healthcare, LLC employed claimant as a certified nursing assistant (CNA) from April 1, 2021 until November 4, 2025.

(2) Claimant's position required maintaining a determination of fitness for work from the Oregon Health Authority (OHA). If determined at any time to be unfit for work, the employer was prohibited by law from employing claimant in her position. Claimant understood that she was required to periodically submit to background check updates during her employment.

(3) In March 2025, claimant was charged with a misdemeanor violation of ORS 162.295, tampering with physical evidence. Claimant reported the charge to the employer months after being charged.

(4) In August 2025, claimant was required to submit to a periodic background check through OHA. The criminal charge against claimant remained pending at that time.

(5) On September 11, 2025, OHA sent a letter to the employer stating that the background check results rendered claimant unfit to continue working in her position, effective immediately. This result was based on erroneous information that claimant had been convicted of the ORS 162.295 charge on August 12, 2025, when, in fact, the charge remained pending at that time. The employer suspended claimant from work without pay, giving claimant an opportunity to appeal OHA's determination of unfitness.

(6) On September 16, 2025, claimant was convicted of the ORS 162.295 violation.

(7) On September 30, 2025, OHA sent claimant a final, appealable determination containing the same information that had been provided to the employer on September 11, 2025, including the erroneous conviction date. Claimant pursued appeal of the determination through October and November 2025.

(8) On November 4, 2025, the employer discharged claimant because OHA's determination of unfitness remained undisturbed on appeal. Claimant's appeal remained pending at that time, and OHA had suggested to claimant that her appeal would likely take a long time to resolve due to a backlog of cases, which claimant had relayed to the employer.

CONCLUSIONS AND REASONS: Claimant was discharged for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer suspended or 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).

The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual. OAR 471-030-0038(3)(c).

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).

ORS 162.295 provides:

(1) A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, the person:

- (a) Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability; or
- (b) Knowingly makes, produces or offers any false physical evidence; or
- (c) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

(2) Tampering with physical evidence is a Class A misdemeanor.

The employer suspended claimant from work on September 11, 2025, based on a letter from OHA stating that claimant was determined to be unfit, under ORS 181A.190 and applicable rules, to continue in her position due to OHA’s belief that she had been convicted of a violation of ORS 162.295 on August 12, 2025. Claimant remained suspended from work until her discharge on November 4, 2025, for the same reason, with OHA’s determination of unfitness remaining undisturbed by claimant’s pending appeal. The order under review concluded that claimant was suspended from work for misconduct and therefore disqualified from receiving benefits effective September 7, 2025. Order No. 26-UI-315976 at 3-4. The order erred in focusing the discharge analysis on the date of suspension rather than the date of discharge.

While ORS 657.176(2) provides for disqualification from benefits when a claimant “[h]as been suspended from work for misconduct connected with work,” the Department has interpreted this to apply only to finite periods of suspension imposed as discipline in lieu of discharge, and not to indefinite

suspensions for investigatory or administrative purposes preceding discharge. *See* Unemployment Insurance Policy Guide (12/2025) at 108-109. As such, claimant’s administrative suspension from September 11, 2025 through November 3, 2025 does not subject her to potential disqualification from benefits, and is not the focus of the misconduct analysis. The reasons for claimant’s November 4, 2025 discharge are properly the focus of that analysis.

Claimant was convicted of a violation of ORS 162.295 that occurred in March 2025. The record suggests that the employer was unaware of the violation until claimant told them she had been charged, and therefore the criminal act itself was, more likely than not, not directly connected to claimant’s work. However, claimant knew or should have known that, under applicable law, continued employment in her position was contingent on maintaining work authorization through OHA’s fitness determination process that included periodic background checks for criminal convictions. Relevant case law has held that off-duty criminal conduct not directly related to one’s employment may nonetheless be considered “connected with work” for purposes of ORS 657.176(2) if it makes compliance with reasonable employer policies, or continued employment, impossible. *See, e.g., Weyerhaeuser Co. v. Employment Div.*, 107 Or App 505, 812 P2d 44 (1991) (where off-duty conduct makes it impossible for an individual to comply with the employer’s attendance requirements, the relevant question is whether claimant willfully created the situation that made it impossible for them to attend work or to comply with the policy); *Barnes v. Employment Dept.*, 171 Or App 342, 15 P3d 599 (2000) (claimant created a situation that made it impossible for him to comply with his employer’s requirement that he maintain a valid driver’s license); *Freeman v. Employment Dept.*, 195 Or App 417, 98 P3d 402 (2004) (claimant created a situation that made it impossible to comply with the employer’s requirement that he maintain driving privileges); *Dawson v Employment Dept.*, 251 Or App 379, 283 P3d 434 (2012) (claimant’s wantonly negligent decision to drink and drive resulted in his incarceration and made it impossible for claimant to comply with the employer’s requirement that he remain available for work). Here, claimant’s criminal conduct and resulting misdemeanor conviction led to OHA’s determination of unfitness, which, in turn, precluded the employer from continuing to employ claimant in her position. Therefore, claimant’s criminal conduct was “connected with work” for purposes of the misconduct analysis.

A violation of ORS 162.295 requires specific knowledge and intent, and claimant’s conviction for that offense established, by at least a preponderance of the evidence, that claimant acted willfully or with wanton negligence in violating that statute. This willful or wantonly negligent conduct resulted in claimant’s loss of work authorization from OHA, which was required to maintain her position with the employer. As it was reasonably foreseeable to claimant that engaging in any criminal activity could lead to this result, the loss of her required work authorization was reasonably attributable to her. Therefore, under both the standard analysis and OAR 471-030-0038(3)(c), claimant’s criminal act was misconduct. Moreover, as the act was illegal, it cannot be excused as an isolated instance of poor judgment under OAR 471-030-0038(3).

Claimant’s arguments at hearing largely concerned the erroneous conviction date on which OHA relied in making the September 11, 2025 and subsequent determinations of unfitness, and perceived lack of due process in her ability to challenge that error. Claimant is correct in that, more likely than not, if OHA knew on September 11, 2025 that she had not yet been convicted, they would not have issued the determination of unfitness that day, and the employer would not have suspended her from work that day. However, claimant was convicted five days later, on September 16, 2025, and from that point on was properly subject to a determination of unfitness, which precluded the employer from allowing her to

continue to work in her position. As previously explained, claimant is not subject to disqualification from benefits during the period of suspension, so the prematurity of the determination of unfitness and suspension from work do not directly bear on the misconduct analysis. Claimant's discharge from work on November 4, 2025 was not proximately caused by the erroneous conviction date in the background check, but was the reasonably foreseeable consequence of claimant's criminal actions in March 2025 which therefore constituted misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective November 2, 2025.

DECISION: Order No. 26-UI-315976 is modified, as outlined above.

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

DATE of Service: February 27, 2026

NOTE: This decision modifies the ALJ's order denying claimant benefits. Please note that in most cases, payment of any benefits owed will take about a week for the Department to complete.

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 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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