EO: Intrastate
BYE: 25-Jul-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0078

Late Application for Review Allowed
Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 5, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0012721220). The employer filed a timely request for hearing. On December 3, 2025, ALJ Hall conducted a hearing at which claimant failed to appear, and on December 5, 2025 issued Order No. 25-UI-313166, affirming decision # L0012721220. On December 26, 2025, Order No. 25-UI-313166 became final without the employer having filed an application for review with the Employment Appeals Board (EAB). On December 30, 2025, the employer filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the employer's late application for review, and a December 18, 2025 letter from the employer to the Office of Administrative Hearings (OAH) with OAH's reply, marked as EAB Exhibits 1 and 2, respectively, 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) Tuality Healthcare employed claimant as a laboratory assistant from February 10, 2025 until April 30, 2025.

(2) The employer had a written attendance policy that prohibited "more than 6 unscheduled absences or tardies totaled together within a rolling 12-month period," with an unscheduled absence of one or more consecutive days treated as a single occurrence of an absence. Exhibit 1 at 3. The policy also stated that employees were expected to report absences "as much in advance as possible." Exhibit 1 at 3. New

employees were subject to a 90-day probationary period where "either party can determine to end the relationship" based on whether the relationship is a "good match." Exhibit 1 at 3. Claimant was given access to a copy of these policies at hire.

(3) Claimant was absent from work on February 14; February 18 and 19; April 3 and 4; April 18; and April 21 through 25, 2025.

(4) The employer did not receive notice that claimant would be absent on April 21, 2025. In the afternoon of April 22, 2025, claimant told her supervisor that she had been in the hospital since April 20, and that she believed her sister had informed the employer of her absence. Claimant also told her supervisor that she would be absent from work the following day, April 23, but hoped to return to work on April 24, and would bring a doctor's note when she returned. The employer did not receive notice that claimant would be absent on April 24 or 25, 2025.

(5) Claimant returned to work as scheduled on Monday, April 28, 2025. Under their attendance policy, the employer could require claimant to provide medical documentation to substantiate her absence of more than three consecutive days. Exhibit 1 at 3. However, claimant did not provide documentation, and the employer did not request it or inquire further into the reason for claimant's extended absence.

(6) On April 30, 2025, the employer discharged claimant. In a letter explaining her discharge, they cited "concerns about the number of absences within [the] first 90-days of employment" and noted that claimant was nearing the end of her probationary period. Exhibit 1 at 2. More specifically, the letter cited claimant having "been out on sick leave for 11 days since [her] hire date . . . in violation of [the policy limiting absences to six occurrences in twelve months]." Exhibit 1 at 2. The letter did not cite other potentially relevant provisions of the attendance policy, such as giving timely notice of an absence or providing medical documentation to substantiate an extended absence.[1]

(7) Order No. 25-UI-313166, mailed to the employer's address on file on December 5, 2025, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 25-UI-313166 at 6. Order No. 25-UI-313166 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before December 26, 2025 to be timely."

(8) On December 18, 2025, the employer sent a letter to OAH inquiring why they had not received an order following the December 3, 2025 hearing. In response, on December 26, 2025, OAH emailed a copy of Order No. 25-UI-313166 to the employer.

(9) On December 30, 2025, the employer filed a late application for review of Order No. 25-UI-313166.

CONCLUSIONS AND REASONS: The employer's late application for review is allowed. Claimant was discharged, but not for misconduct.

[1] The employer's attendance policy also contained a provision that three consecutive days of absence without notice would be deemed a resignation. Exhibit 1 at 4. However, the employer asserted at hearing that this provision was inapplicable to claimant's circumstances and did not factor into her discharge. Audio Record at 15:31.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ended. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 25-UI-313166 was due by December 26, 2025. The employer's application for review was filed on December 30, 2025, and was therefore late. The employer sent a letter to OAH on December 18, 2025, stating that they had not received an order following the December 3, 2025 hearing, and OAH responded on December 26, 2025, by emailing a copy of Order No. 25-UI-313166. EAB Exhibit 2 at 1-3. Additionally, in their late application for review, the employer wrote, "Please consider timely as I just received the decision." EAB Exhibit 1 at 1. It is reasonable to infer from this evidence that the employer's failure to receive the mailed copy of Order No. 25-UI-313166 was a factor beyond their reasonable control that prevented timely filing of an application for review. Good cause therefore exists to extend the filing deadline. Furthermore, as the late request for hearing was filed within seven days of when OAH emailed a copy of the order to the employer, it was filed within a "reasonable time" after the factor that prevented timely filing ended. Accordingly, the employer's late application for review is allowed.

Discharge. 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). Absences due to illness are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant based on their belief that her eleven absences within the first 90 days of employment violated their attendance policy. The policy prohibited "more than 6 unscheduled absences or tardies totaled together within a rolling 12-month period," with an unscheduled absence of one or more consecutive days treated as a single occurrence of an absence. Exhibit 1 at 3. Claimant did not participate in the hearing and therefore did not rebut the employer's assertion that she had been made aware of this policy, or that she had been absent on the eleven days alleged. However, several of these absences occurred on consecutive workdays, which the policy treated as a single occurrence. The absences on February 18 and 19, April 3 and 4, and April 21 through 25, 2025, therefore counted as a total of three occurrences under the policy. Under the employer's written attendance policy, those occurrences, combined with the absences on February 14 and April 18, totaled no more than five

occurrences of unscheduled absences.[2] Therefore, the employer has not shown that claimant violated the policy by accumulating more than six occurrences of unscheduled absence. The employer did not cite in their letter discharging claimant any alleged violation of other provisions of the attendance policy and, as such, it is reasonable to infer that any other potential violations were not part of the proximate cause of claimant's discharge.[3]

Furthermore, even if claimant's accumulation of absences had violated an employer policy, the reason for her absence on the final occasion is the initial focus of the misconduct analysis. *See generally* June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division (the last occurrence of an attendance policy violation is considered the reason for the discharge). Claimant told her supervisor on April 22, 2025 that she had been in the hospital since April 20, 2025. It is reasonable to infer from this that her absence from April 21 through 25, 2025 was due to illness. Under OAR 471-030-0038(3)(b), absences due to illness are not misconduct. Accordingly, while the employer may have felt that claimant's attendance during the initial months of her employment was not a "good match" for their business needs, and therefore discharged her prior to the end of her probationary period, she was not discharged for misconduct within the meaning of the rule.

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

DECISION: The employer's late application for review is allowed. Order No. 25-UI-313166 is affirmed.

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

DATE of Service: <u>February 6, 2026</u>

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.

[2] The record suggests that claimant was not scheduled to work on weekends, and it is unclear whether she was scheduled to work on holidays. February 15 and 16, and April 19 and 20, 2025, were each weekend days, and February 17, 2025 was the Presidents' Day holiday. The absence of February 14 may therefore have been a consecutive workday to the February 18 and 19 absences, and the April 18 absence may have been a consecutive workday to the April 21 through 25, 2025 absences. If so, claimant may have had as few as three occurrences under the attendance policy.

[3] *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 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).

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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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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