

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0081**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 1, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective October 26, 2025 (decision # L0014386883).<sup>1</sup> Claimant filed a timely request for hearing. On December 31, 2025, ALJ Krueger conducted a hearing, and on January 2, 2026 issued Order No. 26-UI-315983, reversing decision # L0014386883 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On January 21, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) TTEC Services Corporation employed claimant as a customer service representative from September 20, 2023 through October 30, 2025. Claimant worked remotely, and her duties involved receiving inbound phone calls.

(2) The employer maintained a policy regarding employee conduct which required employees “[t]o remain professional and to conduct yourself in a business[like] manner.” Transcript at 7. This policy was contained within the employer’s handbook, which was provided to claimant when she was hired.

(3) In or around August 2025, a new lead worker, “L,” was assigned to claimant’s team. From that point onward, L frequently invited claimant into private chats where she proceeded to use foul language with claimant such as “how she didn’t give a shit about this, and she didn’t give a shit about that, and how she hated her job[.]” Transcript at 16. L also encouraged claimant to speak freely by advising her, “be comfortable, speak the way you want to, I don’t have a problem with that.” Transcript at 16. Based on these statements and L’s own choice of language, claimant understood this advice to mean that she was free to use foul language when conversing with L.

<sup>1</sup> Decision # L0014386883 stated that claimant was denied benefits from October 26, 2025 to August 29, 2026. However, decision # L0014386883 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 26, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(4) On August 28, 2025, claimant was attending a medical appointment regarding her recent diagnosis of bipolar disorder. At that time, claimant received a text message from L regarding a technical issue claimant had been experiencing with her work computer. In the course of the text conversation, L sent claimant a message which stated, “Nobody has said anything about firing you. You don’t even have a corrective action. A discussion log means we talked about it. You need to get something for your head. You’re paranoid. Nobody is out to get you. You’re out to doctor, good. Somebody needs to get that bipolar under control, LOL.” Transcript at 18–19. Claimant, offended at L’s statement regarding her condition, responded, “I’m not fucking paranoid, and thanks for the attempt to change. One thing I do know is you’re not anything I believed you might have been a few weeks ago. That’s some fucked up shit you just said to me. Eat a dick.” Transcript at 20–21.

(5) On September 12, 2025, L issued claimant a written warning for “unprofessionalism” because of the language she used during their text exchange on August 28, 2025. Transcript at 8.

(6) On September 16, 2025, claimant took an inbound call and contacted another lead worker, “E,” for help. E responded by telling claimant that claimant was required to use a particular “template” to ask her question. Transcript at 8. Over the course of her shift that day, claimant continued to ask E for help on calls, but either did not use the required template or did not fill it out correctly at least five times. In response to claimant’s inquiries, E continued to reiterate she could not help claimant unless claimant used the required template. On one of the templates that claimant submitted with an inquiry, in response to the question, “What resources did you use,” claimant responded, “You need to use your resources and help me.” Transcript at 12–13. In another template requesting name, case, VIN and year, number and description, what was done and tools checked claimant wrote “I need the address for Lemon Laws or where to find it.” Transcript at 10. Later that day, as a result of claimant’s repeated failure to use the template correctly, or at all, despite repeated instructions to do so, the employer issued claimant a final written warning for “repeated refusal to follow clear communicated procedures, dismissive and sarcastic tone, and disparaging remarks towards leadership” in violation of their code on conduct. Transcript at 10.

(7) On October 30, 2025, L called claimant into a conversation about claimant’s work performance and outlined performance areas that claimant needed to improve. During the conversation, claimant deflected L’s criticism, stating, “It’s my money, my job being affected because I had a lazy, uncaring, half-assed team lead,<sup>2</sup> while you’re telling me it’s my fault, not even considering that.” Transcript at 6. Claimant was having manic symptoms from her bipolar disorder that day.

(8) On October 30, 2025, the employer discharged claimant because they determined that her statement to L during their conversation that day constituted “unprofessional conduct” under their policy. Transcript at 6.

**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

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<sup>2</sup> The record indicates that claimant was referring here to a previous lead worker, not L. *See* Transcript at 17.

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 they determined that her statement to L during their conversation on October 30, 2025, in which claimant blamed her performance issues on having "had a lazy, uncaring, half-assed team lead," constituted "unprofessional conduct" under their policy. The order under review concluded that this did not constitute misconduct, explaining, in relevant part, that claimant "did not deliberately violate the code of conduct... [because she] was attempting to explain how her process, established with her former lead worker, differed from the process expected by her new lead worker." Order No. 26-UI-315983 at 3. It likewise concluded that claimant did not violate the policy with wanton negligence because she "was experiencing manic symptoms caused by her bipolar disorder," and that the employer therefore did not meet their burden to show that claimant "was indifferent to the consequences of her statement" in light of her symptoms. Order No. 26-UI-315983 at 3. The order under review further concluded that claimant's conduct on October 30, 2025 was more likely than not a good faith error because, based on L's prior statements to claimant, "[c]laimant reasonably [but mistakenly] believed [that the] employer tolerated, and to some extent even encouraged, informal language use including a curse term like 'lazy ass'[".]" Order No. 26-UI-315983 at 3-4. The record does not support these conclusions.

First, regardless of whether claimant intended to violate the employer's expectations by describing her former lead as lazy, uncaring and "half-assed," claimant had reason to know that the employer would not condone her use of such language. On both September 12 and 16, 2025, the employer issued claimant warnings because they determined that her conduct leading up to each warning constituted violations of their professionalism policy. The warnings put claimant on notice that refusing to follow procedures, using a dismissive or sarcastic tone, and making disparaging remarks toward leadership was a violation of the employer's code of conduct. Transcript at 10-11. Moreover, the September 12, 2025 warning specifically involved the use of foul language. Based on these warnings, claimant was on notice that the employer would not tolerate her referring to another lead worker as a "lazy ass."

Given the warning on September 12, 2025, claimant should have reasonably concluded that using language in that fashion was not permitted, despite claimant's team lead "L" previously using foul language when she was assigned to claimant's team. Additionally, while the record does show that

claimant was experiencing manic symptoms that day, it does not show that these symptoms impaired claimant's ability to control what she said to others. Therefore, the totality of the evidence shows that claimant's conduct on October 30, 2025 was at least a wantonly negligent violation of the employer's expectations.

Claimant's conduct on October 30, 2025 cannot be excused as an isolated instance of poor judgment because the record shows that her conduct on August 28, 2025 and September 16, 2025 also constituted willful or wantonly negligent violations of the employer's expectations. As to the incident on August 28, 2025, claimant testified that she was "off work," that the comment she made to L had "nothing to do with... the job," and that the text message exchange was a "private" conversation on the respective parties' personal phones. Transcript at 18, 22. However, the record shows that the communication was related to work matters. Transcript 18-19. For an act to be considered misconduct under ORS 657.176(2)(a), it must, in relevant part, be "connected with work." Despite the fact that claimant was not working at the time, claimant was speaking to a direct supervisor about work related matters, and could reasonably have foreseen that such an escalation of conflict could negatively affect their working relationship. Therefore, despite the conduct having occurred while off-duty, it was work-related.<sup>3</sup>

Further, while L had previously advised claimant to "be comfortable [and] speak the way you want to," the record does not show that L had told claimant that it was acceptable to angrily use foul language directed at L (or any other employee). Therefore, claimant did not have a reasonable basis for believing that doing so would be acceptable to the employer. Instead, because claimant could have reasonably determined that using such language in anger towards her supervisor would have violated the employer's expectations, her having done so was at least a wantonly negligent violation of those expectations.

As to claimant's conduct on September 16, 2025, the record shows that E, the lead worker to whom claimant was posing questions that day, repeatedly told claimant to use the "templates" in order to pose those questions; but that claimant either refused to do so, filled them out incompletely or, as the employer's witness testified, using a "dismissive and sarcastic tone[.]" Transcript at 10. In particular, on one of the templates that claimant submitted with an inquiry, in response to the question, "What resources did you use?" claimant responded, "You need to use your resources and help me." This does not show that claimant was making a good faith effort to use the template as directed. Claimant likewise testified at hearing that she "was a little frustrated" by the lack of help she received, suggesting that this type of response was an effort to circumvent the employer's requirements and request help without filling out the forms as directed. Because E had repeatedly directed claimant to use the templates, but claimant failed to do so as directed, claimant violated the employer's expectations here with at least wanton negligence.

For the above reasons, claimant was discharged for a willful or wantonly negligent violation of the employer's expectations on October 30, 2025. Because the record shows that this conduct was part of a pattern of other willful or wantonly negligent conduct, the final incident on October 30, 2025 was not isolated, and cannot be excused as an isolated instance of poor judgment. Claimant therefore was

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<sup>3</sup> *Sun Veneer v. Employment Div.*, 105 Or App 198, 804 P2d 1174 (1991) (off-duty conduct must affect or have a reasonable likelihood of affecting the employee's work or the employer's workplace in order to constitute work-connected misconduct).

discharged for misconduct, and is disqualified from receiving unemployment insurance benefits effective October 26, 2025.

**DECISION:** Order No. 26-UI-315983 is set aside, as outlined above.

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

**DATE of Service:** March 6, 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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