

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0083

Reversed & Remanded

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 effective October 12, 2025 (decision # L0014253271).¹ Claimant filed a timely request for hearing. On December 30, 2025, ALJ Naylor conducted a hearing, and on January 2, 2026 issued Order No. 26-UI-315978, reversing decision # L0014253271 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On January 22, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

The parties may offer new information such as that included with the employer's written argument into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Stella-Jones Corporation employed claimant as a stormwater operator from March 10, 2025 until October 17, 2025.

¹ Decision # L0014253271 stated that claimant was denied benefits from October 19, 2025 to October 17, 2026. However, as decision # L0014253271 asserted that the work separation occurred on October 17, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 12, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

(2) The employer expected claimant to conduct inspections of wells and accurately report whether the well equipment was functioning normally. Claimant understood this expectation. On October 7, 8, and 9, 2025, claimant was expected to inspect a “wet well” which had been out of service and not subject to daily inspections through the dry season; but which had been undergoing cleaning on October 6 and 7, 2025 in anticipation of resuming service thereafter, with rain forecast for the following days. Transcript at 11.

(3) On October 7, 2025, another employee, “H,” placed a padlock with his name on it on the control box of the wet well, such that the breaker supplying power to the well’s equipment could not be turned on. At 8:30 a.m., H completed a form documenting the placement of the padlock. The form was also signed by several other employees, but not claimant. Claimant’s name was listed on the form as a person to be notified of the lock’s placement.

(4) On October 7, 8, and 9, 2025, claimant completed a log certifying that he had inspected the wet well each day and that its equipment had been powered on, tested, and was operating normally. Claimant did not work on October 10, 2025.

(5) On October 12, 2025, at approximately 6:00 a.m., the employer’s plant manager noticed water exiting an overflow pipe of the wet well, which should not have been occurring if the wet well was operating properly. The plant manager went to the control box for the wet well and saw that a padlock with H’s name on it was preventing the breaker supplying power to the well equipment from being turned on. The plant manager cut off the lock and powered on the wet well equipment. The plant manager then contacted H, who told the plant manager that he had placed the lock on the control box on October 7, 2025.

(6) Based on these circumstances, the plant manager believed that the padlock he cut off had continuously been in place since 8:30 a.m. on October 7, 2025; that claimant had therefore not powered on the wet well or tested its equipment on October 7, 8, or 9, 2025; and that claimant falsified the inspection reports for those days by logging results as normal. Claimant was suspended from work pending investigation.

(7) On October 17, 2025, the employer discharged claimant based on their belief that he had falsified inspection reports regarding the wet well on October 7, 8, and 9, 2025. At the time of discharge, claimant told the employer that the wet well had not been locked during his inspections and maintained that he had powered on and tested the well equipment, and that it was functioning normally each day.

CONCLUSIONS AND REASONS: Order No. 26-UI-315978 is set aside, and the matter remanded for further development of the record.

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).

The employer discharged claimant because they believed that he had falsified inspection reports regarding the wet well on October 7, 8, and 9, 2025. The order under review concluded that the employer failed to show by a preponderance of the evidence that claimant did not conduct the wet well inspections on those dates and therefore falsely certified that the inspection results were normal. Order No. 26-UI-315978 at 3-4. The record as developed is insufficient to determine whether the employer has met their burden of proof on this point, and further development of the record is warranted.

The employer reasonably expected that claimant would inspect the wet well each day on October 7, 8, and 9, 2025, including turning on the power to the well, and that he would accurately report whether the well equipment was operating normally when tested. Claimant understood this expectation. The parties disputed a fact key to determining whether claimant willfully or with wanton negligence failed to conduct the inspections and falsified the results: whether the breaker to the control box for the wet well was padlocked during the times claimant purportedly conducted his inspections.

None of the employer’s witnesses at hearing had first-hand knowledge of whether the wet well control box was locked during claimant’s inspections. However, they testified to a hearsay account of the plant manager, who relayed to them that on October 12, 2025 at approximately 6:00 a.m., he had cut the padlock on the control box after discovering water overflowing from the wet well. The plant manager further asserted to the witnesses that the padlock had H’s name on it, and when the plant manager asked H about it, H said that the lock had been placed there on October 7, 2025. In support of H’s hearsay account, the employer submitted a form signed by H on October 7, 2025 at 8:30 a.m. that documented H’s placement of the lock at that time. Exhibit 3 at 2.

In contrast to this evidence, claimant testified that the control box was not locked during any of his three inspections, and that each time he successfully powered on the well equipment with no anomalies observed. Transcript at 36-37, 40-41. In support of that account, claimant testified that another employee, “J,” conducted redundant inspections of the wet well on the days in question, also recording normal results, and provided his inspection log to claimant while suggesting to claimant that it was corroborating evidence that the control box was not locked. Transcript at 38-39, 47; Exhibit 1 at 1. In rebuttal to this evidence, an employer witness asserted that J’s inspections were not redundant of claimant’s and should have focused only on the integrity of the well, not the control box or the function of the equipment. Transcript at 55-56. Claimant also testified that there was a malfunction in the wet well control box, explaining, “Due to the fact that it wasn’t locked out properly when we. . . turned that button we got a false-positive test because that motor sucked in. And it. . . stated that it turned it on. And. . . I’ve made aware to them when they terminated me that that was going on. And I had a conversation with the electrician who – that came out. And the day – the morning that they let me go they had Farnham Electric come and – and fix that problem.” Transcript at 39.

In weighing this conflicting evidence, additional information about the employer’s procedures and the inspections claimant conducted may be useful. As the employer asserted the wet well control box was locked in order to clean that well on October 6 and 7, 2025, inquiry on remand should include why the

lock placement form was dated October 7 rather than October 6; whether a new form was to be used for each day the box was locked; whether removal of a lock is typically documented in writing; whether any other forms dating from October 6 through 12, 2025 regarding the wet well exist in the employer's records; whether the employer relied exclusively on claimant's inspections in tracking whether the wet well was operable (i.e., why the October 7, 2025 lock installation form was insufficient to alert the employer that the well was potentially inoperable when it began raining the next day); and whether it was possible for a lock to be placed on the box on October 7, 2025, removed later that day after cleaning concluded and before claimant's daily inspection, then replaced sometime after claimant inspected the box on October 9, 2025 and before the plant manager cut the lock off on October 12, 2025.

Regarding claimant's testimony about the inspections, it is unclear whether claimant was asserting two seemingly mutually exclusive scenarios had occurred: that the control box was not padlocked during his inspections; and that it was locked, but somehow not "properly" locked, allowing him to turn on power to the equipment and test it with a "false-positive" normal result. Transcript at 39. Inquiry on remand should clarify precisely what the employer asserts was padlocked, and what claimant observed and did when conducting his inspections. References to photographic evidence while witnesses testify, such as the photographs submitted with the employer's written argument, would likely aid the understanding of their testimony. Further, inquiry should include when claimant discovered that power was flowing to the wet well even when locked; when and by whom this was reported to the employer or the electrician who fixed it; and, if claimant was aware of this malfunction prior to or during any of his three inspections at issue, why he did not report the malfunction as an anomaly on the inspection log. The parties may also wish to offer clarifying evidence regarding their respective positions on the significance of J's inspections, such as through providing a written statement or testimony from J, detailing the extent of J's inspections and whether the results corroborate that the well was unlocked and operating normally on October 7, 8, and 9, 2025.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 26-UI-315978 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-315978 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 9, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-315978 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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 desisyong ito.

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

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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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