

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0090

Reversed & Remanded

PROCEDURAL HISTORY: On October 3, 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 August 24, 2025 through August 29, 2026 (decision # L0013245710). Claimant filed a timely request for hearing. On January 5, 2026, ALJ Andersen conducted a hearing, and on January 12, 2026 issued Order No. 26-UI-316676, modifying decision # L0013245710 by concluding that claimant was discharged for misconduct, and therefore disqualified from receiving benefits effective August 24, 2025 and until requalified under Department law. On January 27, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant 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 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 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

The parties may offer new information, such as the new information in claimant'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 the 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) Klamath Health Partnership, Inc. employed claimant as a medical assistant (MA) at their clinic from March 17, 2025 through August 25, 2025. As a MA, claimant's duties included rooming patients for their appointments, taking patients' vital signs ("vitals"), giving injections, and ensuring that the clinic's medical providers were provided with documentation they needed to review or sign.

(2) By policy, the employer required MAs to always take a patient’s vitals at every visit. Additionally, the employer maintained a code of ethics which stated, in relevant part, “Accurate vital signs are a critical component of patient assessment. Entering fabricated values create[s] a . . . risk for loose diagnosis, delayed treatment, or inappropriate critical decisions. Healthcare organizations are legally and ethically required to maintain accurate medical records. Falsification of clinical documentation is considered a serious breach of that obligation.” Transcript at 39–40. Claimant was provided with copies of these policies, and understood them.

(3) On July 21, 2025, the employer generated a “corrective action form” alleging that on July 17, 2025, claimant violated their protocols regarding vaccine administration and medical waste handling by failing to prepare some of the necessary documentation for the patient, accidentally discarding the vaccine vials into a sharps container before use, and then unsafely attempting to retrieve the vials from the sharps container. Exhibit 1 at 7. On July 24, 2025, the employer presented the warning to claimant, which she acknowledged by signature. Exhibit 1 at 8.

(4) On August 22, 2025, the employer generated a corrective action form indicating that they would be discharging claimant for several alleged violations of their policies. These included allegations that claimant had violated their controlled substance protocol by preparing a testosterone injection for a patient without another staff member present; that claimant had violated their scheduling policy by scheduling patients for initial consultations with the clinic’s providers without obtaining the providers’ prior consent, and then responding “in a rude and dismissive manner” when notified of the error; that claimant had “caused unnecessary concerns” in another employee due to “[i]nappropriate [c]ommentary” during an interaction in the week of August 11, 2025; and that claimant had been failing to fully document “needed information for rescheduling” patients and “making comments that should not be entered into a patient’s permanent chart.” Exhibit 1 at 5.

(5) Additionally, the August 22, 2025 form alleged that claimant had failed to fully take a patient’s vitals during an August 20, 2025 visit and then falsely entered the vitals into the patient’s chart, after having recently been spoken to about engaging in similar conduct. Exhibit 1 at 5.

(6) On August 25, 2025, the employer discharged claimant due to her alleged conduct on August 20, 2025.

CONCLUSIONS AND REASONS: Order No. 26-UI-316676 is reversed, and this 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).

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 her alleged conduct on August 20, 2025, in which she allegedly failed to fully take a patient's vitals during an August 20, 2025 visit and then falsely entered the vitals into the patient's chart, in violation of the employer's policies regarding always taking and accurately recording patients' vital signs. The employer offered significant corroborating detail to support their assertion that claimant acted as alleged, including an explanation in the August 22, 2025 corrective action form that a witness allegedly overheard claimant "mumble[] something . . . that sounded like 'we do not have to do vitals today'" and an explanation from claimant's supervisor that she had observed "vital signs placed in the [patient's] chart note" after the encounter. Exhibit 1 at 5–6. Furthermore, claimant's supervisor testified at hearing that, after the visit, the supervisor called the patient herself and confirmed that the patient's vitals had not been taken during the visit; and that when speaking to claimant about the incident afterwards, claimant "[s]aid she knows better . . . [and] should have taken the vitals." Transcript at 5–6. By contrast, claimant's testimony was that she always took patient's vitals at every visit, did not know why the patient would claim that she had failed to do so on August 20, 2025, and did not falsify the patient's vitals in the chart that day. Transcript at 17–19.

In weighing these conflicting accounts, the order under review explained that "claimant's testimony was inconsistent," while the employer's testimony was consistent and corroborated by documents in the record. Order No. 26-UI-316676 at 2–3. Based on this, the order under review found facts in accordance with the employer's account, thereby finding that claimant had failed to fully take the patient's vitals on August 20, 2025 and had thereafter falsified the vitals in the patient's chart; that "[p]rior to the final incident [of August 20, 2025], claimant had received a verbal warning for having failed to take another patient's vital signs"; and that, based on these, the final incident was not an isolated instance of poor judgment but was instead misconduct.¹ Order No. 26-UI-316676 at 2, 4. The record as developed does not support these conclusions, but also does not show a full and fair inquiry into the facts necessary to consider all the issues before the ALJ.

As a preliminary matter, the record requires further development of claimant's alleged conduct on August 20, 2025. While the employer alleged that claimant failed to take some or all of the patient's vitals that day, it is not clear from the record which vitals, if any, the employer believes claimant took from the patient or what the employer considers to be a complete set of vitals. The record must clarify these points. The ALJ should also inquire of claimant whether she has a specific recollection of what she

¹ The order under review also found that an incident occurred in which claimant left a urine sample on the counter instead of refrigerating it, in violation of the employer's policies, and considered this incident when determining that the final incident on August 20, 2025 was not isolated. Order No. 26-UI-316676 at 2, 4. However, the employer did not meet their burden to show that claimant's conduct in that incident was a willful or wantonly negligent violation of their expectations.

did during that visit (as opposed to claimant's belief about what she *might have* done based on her typical practices) and, if so, what that recollection is. Additionally, while the employer alleged that vitals had been entered into the patient's chart, the record does not show who actually entered those vitals, or any details pertaining to that entry. Without such information, the record lacks sufficient detail to show that claimant personally entered them. Thus, on remand, the ALJ should inquire as to what time the patient's appointment was that day and when they left; which vitals were entered into the patient's chart; whose credentials were used to enter those vitals into the chart, including, if possible, a time and date stamp on the entry of that data; and, if claimant's credentials were used to enter the vitals, whether it would have been possible for anyone else to enter them under claimant's credentials.

Further development of the record is also necessary to determine whether, if claimant's conduct on August 20, 2025 is shown to have been a willful or wantonly negligent violation of the employer's expectations, whether her conduct that day was an isolated instance of poor judgment. In relevant part, finding that conduct is an isolated instance of poor judgment requires the conduct was a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. In other words, merely showing that claimant violated the employer's expectations on other occasions is insufficient to show that the final incident was not isolated. Instead, the record must be developed to show whether those other incidents were either of the same or similar type as claimant's conduct on August 20, 2025, or that they were willful or wantonly negligent violations of separate employer policies or expectations.

On remand, the ALJ should develop the record regarding all of the prior instances of willful or wantonly negligent violations of the employer's expectations in which claimant allegedly engaged, so as to determine whether claimant was discharged for an isolated instance of poor judgment. Regarding the allegations that claimant had previously failed to take all of a patient's vitals or fabricated that data in chart notes, the record should be developed to show when these incidents allegedly occurred; which vitals, if any, were taken in those instances; which vitals, if any, were entered in those instances, and under whose credentials; when the employer spoke to claimant about each of these instances, if at all; and, if they did, what explanation, if any, claimant gave in each instance.

Other than the matters regarding the taking and recording of vitals, the record shows that the employer alleged claimant to have violated their expectations in several other areas: the preparation of a testosterone injection without another staff member present; the scheduling of new patients without first obtaining the providers' consent; communicating in a rude or otherwise inappropriate manner with other employees on multiple occasions; the entry of incomplete and inappropriate chart notes; and an incident regarding the mishandling of vaccine vials and medical waste. For each of these alleged violations, the record should be developed to show what the employer's specific expectations were regarding claimant's conduct and how she had been notified of these expectations; when each incident occurred; who witnessed the incidents or how the employer otherwise learned of them; whether and when the employer spoke to claimant about these incidents afterwards; and, if so, what explanation, if any, claimant offered for each incident. The ALJ should also offer claimant the opportunity to separately respond to each of these allegations.

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-316676 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-316676 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 11, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-316676 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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