

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0101

Late Application for Review Allowed
Order No. 25-UI-312799 Reversed
Disqualification

PROCEDURAL HISTORY: On October 1, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0013296900). The employer filed a timely request for hearing. On December 1, 2025, ALJ Griffith conducted a hearing at which claimant failed to appear, and on December 3, 2025 issued Order No. 25-UI-312799, affirming decision # L0013296900. On December 23, 2025, Order No. 25-UI-312799 became final without the employer having filed an application for review with the Employment Appeals Board (EAB). On January 30, 2026, 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 consists of the employer's three-page written argument which includes a statement explaining why they filed their application for review late. 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: The employer enclosed several documents with their written argument, some of which contained information that was not part of the hearing record. The employer 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, EAB considered only information received into evidence at the hearing other than the portion of the written argument that includes a statement explaining why the employer filed their application for review late, which, as stated above, has been considered as additional evidence and marked as EAB Exhibit 1. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Family Building Blocks, Inc. employed claimant as a kitchen aide from March 5, 2025 through August 21, 2025. The employer operated institutional kitchens which prepared and delivered meals for young children in nurseries.

(2) The employer maintained policies relating to matters such as workplace safety, food safety, and sanitation. These included requirements to notify coworkers when opening a hot oven or walking behind them with a hot pan, so as to avoid injury, by stating, “hot, behind” or similar; to wash one’s hands appropriately; and to handle kitchen linens and equipment in a sanitary fashion. Exhibit 1 at 5. Claimant was trained on these policies and procedures on multiple occasions.

(3) At some point during her employment, claimant was tasked with preparing a meal for a child who had a serious food allergy. The employer’s procedure required claimant to package the child’s meal in a bento box, rather than on a plate. Nevertheless, on that occasion, claimant did not package the meal in a bento box, but put it on a plate. Claimant’s supervisor asked her why she had done so, and she responded that “she thought putting it on a plate would be ok for that day.” Exhibit 1 at 8.

(4) In or around July 2025, claimant’s supervisor retrained her on a number of sanitation and safety procedures which she had not been following properly. Despite this, during the period of August 6 through 13, 2025, claimant violated the employer’s expectations on several occasions, including by failing to wash her hands when handling food at least three times and by placing an oven mitt on a recycling bin.

(5) On August 14, 2025, claimant opened a hot oven and left it open without warning a coworker who stood nearby, nearly causing them to trip over the oven door. After this occurred, claimant was reminded of the requirement to warn other employees of such hazards. Approximately five minutes later, claimant took hot pans out of the oven and then walked with them behind another employee without warning that employee of the hazard. Additionally, claimant left “a dirty apron on the clean rack” that day. Exhibit 1 at 5. Following these and other occurrences that day, the employer removed claimant from kitchen duty while they considered how to proceed with her employment.

(6) On August 21, 2025, the employer discharged claimant due to her conduct on August 14, 2025.

(7) Order No. 25-UI-312799, mailed to the employer on December 3, 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-312799 at 3. Order No. 25-UI-312799 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before December 23, 2025 to be timely.”

(8) The employer did not receive a copy of Order No. 25-UI-312799 after it was initially mailed. On January 26, 2026, the employer “called... to ask about the status of the hearing decision.” EAB Exhibit 1 at 1. During the call, the representative told the employer “that the decision letter was mailed and that [the employer] had lost the appeal.” EAB Exhibit 1 at 1. The representative subsequently told the employer that they would mail the employer a copy of the ALJ’s order, which would include information on how to appeal it. On January 30, 2026, the employer filed a late application for review of Order No. 25-UI-312799.

CONCLUSIONS AND REASONS: The employer’s late application for review is allowed. Claimant was discharged for misconduct.

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-312799 was due by December 23, 2025. Because the employer did not file their application for review until January 30, 2026, the application for review was late. However, the record shows that the employer failed to file a timely application for review due to circumstances beyond their reasonable control.

In their written argument, the employer explained that they were waiting for the ALJ’s order following the hearing, but that “[d]ue to not receiving the letter in the mail nor seeing a letter on Frances Online, [they] called on January 26, 2026, to ask about the status of the hearing decision.” EAB Exhibit 1 at 1. They further explained that they were “told on the phone that the decision letter was mailed and that [they] lost the appeal,” and that the representative to whom they spoke subsequently mailed them a copy of the ALJ’s order which included “information to appeal the decision.” EAB Exhibit 1 at 1. This shows that the employer failed to file a timely application for review due to not receiving Order No. 25-UI-312799, which was a circumstance beyond their reasonable control. Although the employer did not indicate when they received Order No. 25-UI-312799, it can be inferred from the record that they likely received it on or prior to January 30, 2026 and then, upon receiving it, filed their application for review. Thus, the circumstances which prevented their timely filing ended when they received the order. Given that the order was re-mailed to the employer on or after January 26, 2026, the January 30, 2026 application review was necessarily filed less than seven days after those circumstances ended. Therefore, the employer filed their late application for review within a reasonable time, and their 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).

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 conduct on August 14, 2025. In particular, although the record shows that claimant violated a number of the employer's expectations that day, the record indicates that claimant's two failures to notify her coworkers of nearby hazards (a hot open oven, and then hot pans) in short succession were the final incidents which led the employer to discharge her. *See* Exhibit 1 at 8. The record suggests that claimant was already aware of this requirement prior to the first violation that day. However, even if she was not, she violated the requirement again approximately five minutes after being reminded of it. As claimant did not appear at the hearing, she did not provide any evidence to explain or excuse her conduct. Thus, claimant's repeated failure to meet the employer's expectation in that regard was, more likely than not, the result of her having acted without regard for the consequences of her actions. Therefore, as to at least the second occurrence of claimant failing to warn nearby coworkers of burn hazards, claimant violated the employer's expectations with at least wanton negligence.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. In addition to the violations on August 14, 2025, above, claimant left a dirty apron on "the clean rack" that day. By terming it "*the* clean rack," it can be reasonably inferred that the rack upon which claimant left her dirty apron that day was a designated rack for clean aprons, and that claimant therefore knew or had reason to know that she should not leave dirty aprons there. This is particularly likely, given that her supervisor had recently retrained her on the employer's various procedures relating to safety and sanitation, among other things. Therefore, claimant violated the employer's expectations in that regard with at least wanton negligence.

The record also shows that claimant violated the employer's expectations willfully, or with wanton negligence, on other occasions. For instance, during the period of August 6 through 13, 2025, claimant failed to wash her hands before handling food at least three times. Considering the recent retraining that claimant had been given, it is highly likely that claimant was aware of the requirement to wash her hands before handling food. As there is no evidence in the record to indicate that claimant was in any way prevented from washing her hands, claimant more likely than not acted with indifference to the consequences on those occasions. Similarly, it can be reasonably inferred from the fact of claimant's recent retraining that claimant had reason to know that placing an oven mitt on a recycling bin could contaminate it, and the record lacks evidence to show that she did so with any regard for the consequences of her actions. As such, claimant's multiple instances of failing to wash her hands during that period, and her placement of the oven mitt on the recycling bin, were also at least wantonly negligent.

Finally, claimant acted with at least wanton negligence in preparing the meal of a child with food allergies in a manner different than the employer had established. In that instance, the employer expected claimant to package the child's meal in a bento box, rather than serving it on a plate,

presumably to prevent cross-contamination of food allergens. Claimant failed to do so, instead serving it on a plate and, when confronted, explained to her supervisor that “she thought putting it on a plate would be ok for that day.” This suggests that claimant understood her decision to deviate from the established procedure, meaning that she was aware of the employer’s expectations but disregarded them. In the absence of evidence to the contrary, this shows that claimant more likely than not acted without regard for the consequences of her actions. As such, claimant’s conduct in that instance was at least wantonly negligent.

Because claimant’s wantonly negligent conduct on August 14, 2025 was part of a pattern of other willful or wantonly negligent behavior, it was not isolated. Therefore, claimant was not discharged for an isolated instance of poor judgment, but instead for misconduct, and is disqualified from receiving unemployment insurance benefits effective August 17, 2025.

DECISION: The application for review filed January 30, 2026 is allowed. Order No. 25-UI-312799 is set aside, as outlined above.

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

DATE of Service: March 12, 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.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
 Email: appealsboard@employ.oregon.gov
 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.