

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0107**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 15, 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 (decision # L0013424495). Claimant filed a timely request for hearing. On January 8, 2026, ALJ Frank conducted a hearing, and on January 15, 2026 issued Order No. 26-UI-317206, affirming decision # L0013424495. On February 1, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted written arguments on February 1, 3, and 9, 2026. EAB did not consider claimant's February 1 or 3, 2026 arguments because she 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). Claimant's written argument dated February 9, 2026 did state that she provided a copy of the argument to the employer. However, all three of claimant's arguments 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. 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 claimant's February 9, 2026 argument that were based on the hearing record.

Claimant also asserted in her February 9, 2026 argument that the hearing proceedings were unfair or the ALJ was biased, explaining that the employer sent a copy of their exhibit to claimant "via email rather than by mail and were not accessible to [claimant] until the hearing was already in session," and that claimant therefore "had limited opportunity to review and respond prior to the hearing." Claimant's February 9, 2026 Written Argument at 3.

OAR 471-040-0023(4) (August 1, 2004) required the employer to provide claimant with a copy of their exhibit "[p]rior to commencement of an evidentiary hearing that is held by telephone." Prior to the start of testimony, the employer's representative indicated that they sent a copy of the employer's exhibit to claimant via email on January 7, 2026, more than a day before the hearing itself. Audio Record at 10:25.

Thus, the employer complied with that requirement. Furthermore, claimant was offered the opportunity to object to the admission of the exhibit into evidence, but declined to do so; confirmed that she was able to access the exhibit in her email; and stated that she did not believe the documents in the exhibit were “anything different than what [she had].” Audio Record at 11:35 to 12:00. Given that the exhibit was available to claimant for more than a day prior to the hearing, claimant did not show that she actually had a limited opportunity to review the exhibit, such that she might have been unduly prejudiced by it.

EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Oregon Health & Sciences University employed claimant as a laboratory animal technician from May 30, 2023 through August 27, 2025.

(2) Claimant was diagnosed with attention-deficit hyperactivity disorder (ADHD) and a panic disorder, the latter of which caused claimant to suffer from panic attacks. Claimant sought and was approved for intermittent leave under the Family and Medical Leave Act (FMLA) for her panic disorder and related symptoms.

(3) The employer expected their employees to accurately report their time worked and to not falsify their timesheets. Claimant was generally aware of these expectations.

(4) On July 1, 2025, claimant suffered a panic attack while working. To manage her symptoms, claimant removed herself from her work station to an onsite locker room, where she remained for approximately 92 minutes. While she was in the locker room, a member of management came to check on her. Claimant did not clock herself out for the time she was in the locker room because she “wasn’t really thinking straight” due to the panic attack, and therefore unable to do so. Audio Record at 25:00. Claimant did not adjust her timecard afterwards to reflect the time she had been in the locker room.

(5) On July 2, 2025, claimant suffered a panic attack while working. To manage her symptoms, claimant removed herself from her work station to the locker room, where she remained for approximately 125 minutes. While she was in the locker room, a member of management came to check on her, and “waited with [claimant] to support [her] anxiety.” Exhibit 1 at 4. As with the previous day, claimant did not clock herself out for the time she was in the locker room because she was unable to do so due to the panic attack. Claimant did not adjust her timecard afterwards to reflect the time she had been in the locker room.

(6) On July 11, 2025, claimant left her work station at approximately 2:35 p.m. and went to the locker room, where she completed various work-related administrative tasks on her phone until her shift ended at 3:45 p.m. Claimant had already completed all of the work she was required to do at her work station when she left for the locker room. Based on her training, claimant understood that she was not required to be “anywhere in particular” once she had finished the tasks at her workstation for the day, and therefore believed that completing the administrative tasks on her phone in the locker room was permitted. Audio Record at 28:54.

(7) On or around July 18, 2025, the employer learned of claimant's absences from her workstation while on the clock on the three occasions in July 2025. On July 18, 2025, the employer began disciplinary proceedings against claimant. On August 27, 2025, the employer discharged claimant because she was absent from her work station on July 1, 2, and 11, 2025, and did not clock herself out or modify her timecard after the fact.

**CONCLUSIONS AND REASONS:** Claimant was discharged, but not 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 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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because she was absent from her work station on July 1, 2, and 11, 2025, and did not clock herself out or modify her timecard after the fact. The order under review concluded that claimant violated the employer's policy which "prohibited employees from falsifying company records including timesheets," that it was "more likely than not that claimant willfully violated [the policy]," and that these violations were not isolated instances of poor judgment. Order No. 26-UI-317206 at 3-4. These conclusions are not supported by substantial evidence.

It can be inferred from the record that the employer disapproved of claimant's actions, and, by extension, that they believed her actions violated their policies. However, the record does not actually contain any language from any applicable policy, such that it is possible to ascertain either what the policy actually required, or what the employer had communicated to claimant regarding their expectations, with any specificity. The only evidence in the record on that point is that the employer generally expected their employees not to falsify their timecards, which is also a matter of common sense. Thus, whether claimant's conduct on the dates in question constituted willful or wantonly negligent violations of the employer's timekeeping expectations turns on two questions: whether the conduct actually violated the employer's expectations; and, if so, whether claimant knew or had reason to know that her conduct violated those expectations. The employer has not met their burden to show that any of the three incidents in July 2025 constituted willful or wantonly negligent violations of their timekeeping expectations.

As to the incidents on July 1 and 2, 2025, claimant was absent from her workstation on each date because she was suffering from a panic attack, which led her to remove herself to the locker room area.

To the extent that the employer expected claimant to clock out or report that she was leaving her work station while she was suffering from an incapacitating panic attack, such an expectation was not reasonable during the panic attack. Additionally, the record shows that a member of management “checked in with [claimant] in both of these instances and waited with [claimant] on July 2<sup>nd</sup> to support [claimant’s] anxiety.” Exhibit 1 at 4. Thus, it can be reasonably inferred that the employer was on notice that claimant had taken leave from her workstation because she was suffering from a debilitating medical episode. To the extent that the employer expected claimant to be clocked out while this was occurring, they had an opportunity to either remind her of such an expectation after the fact, or simply ensure that a member of management modify her timesheets accordingly.

The record does not, however, show that the employer so notified claimant, or that they had ever explained to her previously that she should ensure that her timesheet reflected the time she spent having a panic attack. Moreover, the record does not show that the employer’s policy even required employees to clock out (either contemporaneously or after the fact) for instances in which they were suffering from unexpected medical episodes such as the panic attacks that claimant suffered on those two dates. Thus, even if the employer expected, either informally or by written policy, that claimant ensured that she was off the clock while suffering from panic attacks, the record lacks evidence to show that claimant knew or had reason to know of such an expectation. As such, the employer has not met their burden to show that claimant’s failure to do so on those two dates was done either intentionally or without regard for the consequences of her actions, when she knew or should have known her conduct would probably violate their expectations. Therefore, claimant’s conduct on July 1 and 2, 2025 was not misconduct.

As to the incident on July 11, 2025, claimant asserted that she was performing work for the employer on her phone while she was in the locker room, and that she understood, based on her training, that she was permitted to do so because she had already finished the tasks at her workstation that day. The employer offered no rebuttal to this assertion in testimony. The employer’s exhibit contains a “pre-discharge notice,” dated August 12, 2025 and drafted by claimant’s manager, which detailed some of the events of July 11, 2025. Exhibit 1 at 4. In relevant part, the letter stated that claimant had told the employer that she was “in the HRC area working on emails, which [was] false... [because the manager] was working in the HRC area helping another staff member from 2:50-3:22 and [claimant was] not in the area.” Exhibit 1 at 4–5. That manager did not testify at hearing. As such, the manager’s account in the August 12, 2025 letter is hearsay, which is entitled to less weight than claimant’s first-hand account that she had been performing work on her phone in the locker room, and the facts have therefore been found in accordance with claimant’s account.

As with the July 1 and 2, 2025 incidents, it can be reasonably inferred from the record that the employer disapproved of claimant’s conduct on July 11, 2025, and, by extension, that they believed her actions violated their policies on that date. The employer did not show that claimant’s conduct on that date actually did violate their policies, though, as the policies are not in evidence. While claimant’s having removed herself to the locker room to perform administrative tasks on her phone may have violated their expectations, the record lacks evidence to show that claimant knew or had reason to know of these expectations. On the contrary, the record shows that claimant understood from her training that she was permitted to perform such tasks elsewhere on the premises once she had finished the tasks at her workstation, and that she had already finished the latter tasks when she left for the locker room. As such, claimant had a reasonable basis for believing that she was permitted to do so, even if her actions actually

violated the employer's expectations. Therefore, claimant's conduct on July 11, 2025 was, at worst, a good faith error, which is not misconduct.

For the above reasons, the employer did not meet their burden to show that claimant's conduct during any of the incidents in July 2025 constituted willful or wantonly negligent violations of their expectations. Therefore, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 26-UI-317206 is set aside, as outlined above.

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

**DATE of Service:** March 13, 2026

**NOTE:** This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

**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](mailto:appealsboard@employ.oregon.gov)  
 Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://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.