

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0109**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 25, 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 # L0014394567). The employer filed a timely request for hearing. On January 12, 2026, ALJ Murray conducted a hearing, and on January 13, 2026, issued Order No. 26-UI-316877, affirming decision # L0014394567. On February 2, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the employer’s written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Jacksons Food Stores employed claimant as a customer service representative at one of their gas station convenience stores from November 15, 2024 through October 8, 2025.

(2) The employer had policies regarding processes to follow in the case of thefts or robberies, and customer conflict de-escalation tactics. Regarding robberies, the employer’s policy stated that, “you’re to just open your [cash] drawer and give them whatever money they have to keep yourself and others safe.” Transcript at 6. Regarding theft, the employer’s policy stated, “[I]f someone comes in to steal something, just let them take it.” Transcript at 9. Training materials relating to these policies advised tactics such as “not raising your voice and/or yelling . . . talking softly and politely . . . [and to] never put your hands on another person, no matter the situation.” Exhibit 5 at 15. The training materials also gave examples of phrases that escalate conflict and should be avoided, such as “What do you think you’re doing?” and “Hey! Wait! You can’t just take that!” Exhibit 5 at 14. Claimant signed an acknowledgment for receipt of the employer’s handbook which contained the applicable policies, most recently on January 3, 2025. Claimant completed the de-escalation training shortly after she was hired.

(3) On September 27, 2025, claimant began a shift that started at 6:00 p.m., to end at 6:00 a.m. on September 28, 2025. Shortly before 11:30 p.m. on September 27, 2025, while claimant was working alone, two teenage girls with whom claimant was casually acquainted “slammed open” the store’s side door and ran into the bathroom together. Transcript at 17. After some time, one of the girls exited the bathroom, made eye contact with and “smirk[ed]” at claimant, and exited via the front door. Transcript at 17. The girl then approached a car at one of the gas pumps in which six teenage boys were waiting. One of the boys had been repeatedly hitting the help button at the pump. Claimant believed this was a ploy to distract her, as she expected the group to try to steal from the store. Shortly thereafter, the second girl exited the bathroom, took a case of beer from one of the refrigerated cases, and went towards the front door. Claimant yelled, “[H]ey stop,” at the second girl, but the latter continued out of the store. Exhibit 1 at 4–5.

(4) Claimant retrieved her phone so she could take pictures of the teenagers’ vehicles, and exited out of the side door near where they had parked. As claimant was standing outside in front of the side door, the second girl said to claimant, “[Y]ou can’t chase me.” Exhibit 1 at 5. In response, claimant stated that she was not chasing the girl, but that the girl was “not taking the beer,” reminded her of the security cameras in and around the store, and told the girl, “Your ass is going to jail.” Exhibit 1 at 5; Transcript at 18. The second girl then “shoved” the case of beer at claimant, and claimant grabbed the case to avoid being knocked off balance. Exhibit 1 at 5. The group of teenagers then drove off, and claimant reported the incident to law enforcement.

(5) At approximately 4:30 a.m. on September 28, 2025, towards the end of claimant’s overnight shift, a man entered the store dressed in all black and wearing a ski mask, hat, and hoodie. As claimant leaned on the front counter, applying date stickers to packaged products, the man approached the side of the counter, looked at claimant, and said, “Don’t f-ing look at me. Don’t f-ing look at me, bitch.” Transcript at 22. At that point, claimant recognized the man as a former regular customer whom she had previously trespassed from the property for theft a few months prior. Claimant also knew that the man was a drug user, and “[knew] his family . . . [and] what they’re capable of.” Transcript at 25. Claimant then observed the man adjust his waistband, and claimant saw “something black.” Transcript at 22.

(6) The man walked to the front of the counter and directed claimant to open the safe. At the time, claimant could have retrieved approximately \$100 from the safe, but could not take more because of the safe’s time-lock mechanism. However, in the moment, claimant “froze,” and told the man that she could not open the safe and did not have any money. Transcript at 25. The man then revealed more of the gun he was carrying and asked claimant, “Do you want me to pop a cap off in this place, bitch?” Audio Record at 34:02. Claimant, concerned the man could either grab her by her ponytail and smash her face through a nearby glass display, or hit her with the gun, stepped back from the counter and continued repeating that she could not open the safe. The man then became angry and left the store, at which point claimant locked all entrances to the store and called law enforcement and a member of management. The entire encounter lasted approximately 15 seconds.

(7) After upper management learned of the two above incidents, the employer began an investigation into claimant’s conduct during the incidents. On October 8, 2025, the employer discharged claimant because they felt that her conduct violated their policies during the incidents on September 27 and 28, 2025. Prior to September 27, 2025, claimant had never violated any of the employer’s policies or been disciplined for any reason.

**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 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 felt that her conduct violated their policies during the incidents on September 27 and 28, 2025. As to the first incident, the record shows that claimant engaged in several actions in a short period of time, some of which violated the employer’s policies. In particular, during the first incident, the employer’s expectation was that claimant de-escalate the conflict by “not raising your voice and/or yelling,” to avoid using phrases like “Hey! Wait! You can’t just take that!,” and by “just let[ting] them take it.”

Claimant violated these expectations by, for instance, yelling, “Hey, stop,” at the girl who attempted to steal a case of beer, as well as telling her that she was “not taking the beer” and that “[her] ass was going to jail.” Essentially, even though claimant complied with some of the employer’s expectations in this incident by not putting her hands on the thief, claimant pursued the thief and, seemingly, attempted to dissuade her from taking the beer by reminding her of the security cameras nearby and the possibility of arrest and incarceration. Given that claimant had been given a copy of and had been trained on the applicable policies, claimant knew or had reason to know that she was not supposed to engage the thief as she did. Thus, claimant violated the employer’s expectations in this regard with at least wanton negligence.

However, claimant’s conduct was, at worst, an isolated instance of poor judgment. Claimant’s conduct during the first incident encompassed several distinct actions, at least a few of which, discussed above, were willful or wantonly negligent violations of the employer’s expectations. Despite this, given the closeness in time and inherent interrelatedness of these individual actions, it is appropriate to view them as a single incident.<sup>1</sup> Furthermore, the record shows that claimant had never violated any of the

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<sup>1</sup> See *Perez v. Employment Dept.*, 164 Or App 356, 992 P2d 460 (Or. App. 1999).

employer's policies or been disciplined for any reason. Thus, whether claimant's conduct during the first incident was "isolated" turns on whether her conduct during the second incident was also willful or wantonly negligent. The record shows that it was not.

During the second incident, in which a man attempted to rob the store at gunpoint, the employer expected claimant "to just open your [cash] drawer and give them whatever money they have to keep yourself and others safe." This presumably included any money that was accessible in the safe. Although the record shows that claimant could have retrieved at least some money from the safe, she did not do so. The record is less clear as to whether claimant could have retrieved money from the register to hand over to the robber.<sup>2</sup> Even assuming that the policy required claimant to remove money from the safe and the register and hand it to the robber, and that claimant *could have* done so with both the safe and the register, the employer has not met their burden to show that this constituted a willful or wantonly negligent violation of their expectations.

The robber in question was armed and threatened to shoot claimant if she did not comply with his demands. Additionally, claimant had recently trespassed him for theft, she knew him to be a drug user, and she also [knew] his family . . . [and] what they're capable of." The combination of these facts led claimant to freeze, and thus rendered her functionally incapable of complying with his demands and handing over money from the register or safe. Given this, as well as the very short duration of the incident, the record does not show that claimant either intentionally failed to follow the employer's procedures for robberies, or that she did so without regard for the consequences of her actions. Instead, it suggests that due to being incapacitated by fear, she was simply unable to comply with the robber's demands within the short time period in which the incident occurred. Therefore, while claimant may have violated the employer's expectations during the second incident, she did not do so willfully or with wanton negligence.

Because the first incident was the only instance of poor judgment in which claimant engaged, it was isolated. Further, the record does not show that claimant's conduct during the first incident exceeded mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of an official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible, as it was not likely to reoccur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. Because claimant's willful or wantonly negligent conduct during the first incident was isolated and did not exceed mere poor judgment, it was an isolated instance of poor judgment, which is not misconduct.

For the above reasons, 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-316877 is affirmed.

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<sup>2</sup> At hearing, claimant testified, "[T]he register I was at was not my register. It was somebody else's register that had left that day at 10:00 [p.m.]. And I was on the far register." Transcript at 22. This suggests that claimant may have been able to withdraw money from the cash drawer she was working on.

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

**DATE of Service: March 18, 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 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**  
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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.