

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0124

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 10, 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 July 6, 2025 through July 25, 2026 (decision # L0012839816). Claimant filed a timely request for hearing. On January 30, 2026, ALJ Krueger conducted a hearing, and on February 2, 2026 issued Order No. 26-UI-318824, modifying decision # L0012839816 by concluding that claimant was discharged for misconduct, and therefore disqualified from receiving benefits effective July 6, 2025 and until requalified under Department law. On February 6, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) K E McKays Market of Coos Bay, Inc. employed claimant in one of their grocery stores from April 27, 2023 through July 7, 2025. Claimant initially worked in other departments within the store, but accepted a position as an apprentice meat cutter in or around October 2023, and worked in that role through the end of his employment.

(2) The employer maintained several expectations for employees of the store's meat department. These included ensuring that products for sale were rotated so that the freshest products were at the back or bottom of the shelf, so as to avoid having products expire; paying attention to detail so as to ensure accuracy during tasks like cutting, packaging, and labeling products; and completing assigned tasks in a timely manner. Claimant understood these expectations.

(3) On March 14, 2025, the employer discussed with claimant an outline of areas in which they wanted his performance to improve. These included, in relevant part, expectations that claimant manage his time better, work more efficiently, and pay better attention to detail.

(4) On April 18, 2025, the employer issued claimant a written warning because they felt he had failed to pay sufficient attention when he was packing ground beef into a "locker pack" on April 15, 2025, resulting in a larger amount of ground beef than the pack was supposed to contain. Transcript at 10.

(5) On May 29, 2025, the employer issued claimant a warning because they believed that on May 28, 2025, claimant had failed to complete tasks relating to grinding and packaging sausage within the time period they expected him to complete them.

(6) On June 4, 2025, the employer issued claimant a written warning because he did not complete all of the tasks on lists of tasks he had been given within the allotted time, on both May 31, 2025 and June 1, 2025. At the time, claimant had been working on improving his “speed and consistency.” Transcript at 18. Claimant would also notify his manager if he was behind on his assigned tasks.

(7) On June 30, 2025, due to being tired from a long day, claimant was not “paying attention to detail” and mis-labeled chicken breasts by pricing them at the incorrect price. Transcript at 14, 16. The following morning, after learning of his error, claimant pulled the products from the case and re-labeled them correctly.

(8) On July 8, 2025, claimant failed to fill a case with chicken breasts before he finished his shift for the evening. Also on July 8, 2025, the employer believed that claimant had failed to properly rotate chicken wings in a display case, and had failed to properly rotate cases of pork in the meat cooler. As to the chicken wings, the product had been over-ordered, and claimant had put out extra of the product in the display case so that they could be sold before their expiration dates. As to the pork, claimant correctly rotated the cases in the meat cooler that day.

(9) On July 10, 2025, the employer discharged claimant because of poor work performance, following the incidents of June 30 and July 8, 2025.

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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because of poor work performance, following the incidents of June 30 and July 8, 2025. Included with the employer’s exhibit is a document dated July 10, 2025 indicating that claimant was discharged for “substandard work,” and referencing an attached document which outlined the incidents of June 30 and July 8, 2025. Exhibit 1 at 2–3. The employer did not issue claimant a separate warning after any of those incidents occurred, and the record does not show that claimant incurred any other violations, or alleged violations, of the employer’s expectations after July 8, 2025.

As such, the record shows that these incidents were the proximate causes of the employer's decision to discharge claimant. The order under review concluded that these incidents were willful or wantonly negligent violations of the employer's expectations. Order No. 26-UI-318824 at 3–4. The record does not support this conclusion.

As to the June 30, 2025 incident, the order under review relied on claimant's testimony that he was "not paying attention" to determine that claimant's conduct there was wantonly negligent. Order No. 26-UI-318824 at 3. However, this testimony must be considered in context. Claimant testified that he was not paying attention because "[i]t was a long day and [he] was just tired" at the end of his shift. Transcript at 15–16. Claimant further testified that he corrected the issue in the morning after speaking to his manager. Transcript at 16. Claimant's state of mind at the time, coupled with his efforts to immediately remedy the situation once he realized his error, shows that claimant's conduct that day was the result of simple negligence, and not that he had acted without regard for the consequences of his actions. As such, this incident was not a willful or wantonly negligent violation of the employer's expectations.

As to the July 8, 2025 pork incident, the employer's witness did not offer testimony on this allegation. As such, the employer's only evidence of the incident is contained in their exhibit, and indicates that claimant "miss [*sic*] rotated Pork Bone In country styles put (7/12/25) in meat case and (7/11/25) were in meat cooler[.]" Exhibit 1 at 3. By contrast, claimant testified at hearing that he did not mis-rotate meat in the cooler. Transcript at 15. As claimant offered a first-hand account of this allegation, his account is entitled to greater weight, and the facts have been found accordingly. As such, the employer did not meet their burden to show that claimant acted as alleged in this incident.

As to the July 8, 2025 chicken wings incident, claimant testified at hearing that the product had been over-ordered, and that he therefore put extra product out for sale in an effort to minimize loss due to expiration by "put[ting] older dates in one row, and then the newer dates [in a different row]." Transcript at 14–15. The employer's exhibit indicated, regarding this incident, that claimant "miss [*sic*] rotated chicken wings he put (7-11-25) over top of (7/8/25)[.]" Exhibit 1 at 3. These two statements suggest that claimant, in one fashion or another, mis-rotated the chicken wings on that date. Similarly, as to the July 8, 2025 chicken breast incident, claimant did not rebut the employer's assertion that he failed to fill a case with chicken breasts before the end of his shift that day. Even assuming that claimant violated the employer's expectations in these two incidents, however, the employer did not meet their burden to show that either of these incidents were the result of more than simple negligence.

The record shows that claimant had been warned about his work performance at least as early as March 2025, and that those concerns persisted after multiple warnings. However, it also shows that claimant, for instance, had been working to improve on his "speed and consistency," and that he would notify his manager if he was behind on his assigned tasks. In short, this shows that claimant had been making an effort to improve his performance so as to meet the employer's expectations, even if he was ultimately not able to satisfactorily meet them. Thus, to the extent that claimant's actions in the above two incidents were negligent, the employer has not shown that such negligence was due to claimant's indifference to the consequences of his actions, such that they would be considered *wantonly* negligent. Instead, the record shows, more likely than not, that claimant's errors here were due to mere inefficiency resulting from lack of job skills or experience, which is not misconduct.

For the above reasons, claimant was discharged, but not for misconduct, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-318824 is set aside, as outlined above.

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

DATE of Service: March 24, 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.

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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.

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