EO: Intrastate
BYE: 22-Aug-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

384
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0139

Affirmed
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 was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0013277179). The employer filed a timely request for hearing. On December 15, 2025, and continuing on December 30, 2025 and January 12, 2026, ALJ Wahl conducted a hearing, and on January 22, 2026 issued Order No. 26-UI-317753, reversing decision # L0013277179 by concluding that claimant was discharged for misconduct and was therefore disqualified from receiving benefits effective August 3, 2025. On February 10, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Pendleton School District #16 employed claimant as a secretary in a middle school counseling office from September 24, 2001 until August 6, 2025. Claimant was not trained or licensed to provide counseling services.

(2) The employer had a personal electronic device use policy which stated, in relevant part:

> Communication with students using personal devices will be appropriate and professional. Communication with students using personal devices regarding nonschool-related matters is prohibited during work hours and strongly discouraged at all other times. If communicating with students electronically regarding school-related matters, staff should use district e-mail using mailing lists to a group of students rather than individual students. Texting students during work hours is prohibited. Texting students while off duty is strongly discouraged.

Exhibit 3 at 9. Claimant was most recently presented with a copy of this policy during a training she completed on September 25, 2024.

(3) The employer also had a written policy which stated, in relevant part, "Staff shall immediately notify an administrator of any threat, threatening behavior or act of violence the staff member has knowledge of, has witnessed or received." Exhibit 3 at 7. Claimant was aware of this policy.

(4) For approximately six weeks in March and April 2025, claimant engaged in text message conversations with two middle school students. The conversations mostly took place outside of school hours, and involved the students discussing difficulties with their families, peers, and school environment. By engaging in these conversations, claimant intended to offer support to the students who claimant believed were reluctant to discuss these matters with qualified professionals.

(5) The text conversations had little or no connection to claimant's duties as a secretary. When later viewed by administrators, these conversations were seen as offering counseling that claimant was not trained or authorized to provide, and were considered inappropriate and unprofessional. For example, in a text exchange from Friday, March 14, 2025, a student complained that another student was spreading rumors that she was pregnant. Claimant's replies included: "I can confront her on Monday about it and get to the bottom of the issue if you want," and "That's a rumor I can definitely make them feel guilty for spreading and no how compound into some serious issues. Thank you for sharing and hopefully I can fix it Monday." Exhibit 2 at 20-21, 26-27. In a separate exchange on Thursday, March 20, 2025, the student texted claimant about encountering two other students while waiting for the school bus, writing, "[S]o i screamed at them to f off and now [they're] saying 'watch your back tomorrow' and saying [they're] going to fight me," to which claimant replied, "Ugh kid. I understand how fed up you are and I hope it doesn't get worse for you. Maybe not going tomorrow will be a good thing." Exhibit 2 at 30-31. Claimant sent at least two text messages to the students during school hours. *See, e.g.*, Exhibit 2 at 12-13, 63-64.

(6) On Friday, April 11, 2025, a father spoke with claimant seeking help for his son, a middle school student. Claimant understood the parent to say during the conversation that he had removed a knife from the son's backpack and that he "was having trouble with [the son] at home. . . [The father] was concerned [about the son] being harmful to other kids at home. . . and notice[d] things around the building that they were living in. . . dead animals, different concerning things." December 30, 2025 Transcript at 54-55. Claimant immediately relayed this information to the school counselor assigned to that student, E, and asked what to do. E instructed claimant to contact an outside counseling service affiliated with the district which had already provided services to that family, and claimant relayed details of her conversation to a case manager at the counseling service. The case manager relayed those details to the school's principal that day, and the principal set up a meeting for Monday, April 14, 2025, with parties including the father, E, and law enforcement.

(7) At the April 14, 2025 meeting, the father told the principal about his April 11, 2025 conversation with claimant, and stated that what he had told claimant included that his son had told him that he wished he could kill multiple students at school, and that the son had engaged in acts of violence and potentially sexual assault at home. The principal then believed that claimant had violated the threat reporting policy by failing to report the conversation to an administrator "or the student's counselor." Exhibit 1 at 2.

(8) On April 15, 2025, parents of two students complained to the school that claimant had been conversing with their children by text and that the children had regularly been "hanging out" in claimant's office rather than attending classes, and requested that the school stop this from happening. Exhibit 1 at 2.

(9) On April 21, 2025, the employer notified claimant by letter that they were investigating allegations that she had violated the threat reporting policy and personal electronic device use policy, and instructed her to have "no direct contact" with the two students whose parents complained on April 15, 2025. Exhibit 1 at 6. The investigation and disciplinary appeals process culminated in the employer discharging claimant on August 6, 2025, citing their belief that both allegations were substantiated.

CONCLUSIONS AND REASONS: Claimant was discharged 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 based on their belief that claimant had violated their threat reporting and personal electronic device use policies. Regarding the threat reporting policy, the employer reasonably expected that their employees would "immediately notify an administrator of any threat, threatening behavior or act of violence the staff member has knowledge of, has witnessed or received." Exhibit 3 at 7. Claimant was aware of this policy. The alleged violation occurred on April 11, 2025, when a father spoke with claimant regarding concerns about his son. The parties gave conflicting evidence regarding the gravity of what the father reported to claimant, and claimant's actions in response.

The principal wrote in an April 14, 2025 email that the father told the principal that his son had told him "that [the son] wished he could kill multiple students at school. . . [and] shared more specific acts of violence and potential sexual assault done by [the son] while at home." Exhibit 1 at 4. The principal further asserted that the father "let [the principal] know that he had talked to [claimant] about 'all of this'

on Friday." Exhibit 1 at 4. The principal wrote in the email that she was concerned that it was a "breach of confidentiality" for claimant to disclose to the outside case manager what the father had said to her, and "that at no point in time on Friday 4/11/25 did [claimant] inform [E] as the 7th grade counselor or myself of [the father's] concerns. . . As the secretary of the counseling office, [claimant] should have let [E] know and she should have let [the principal] know about this situation." Exhibit 1 at 4.

In contrast, claimant testified that the father told her he had taken a knife out of his son's backpack and "that he was having trouble with [the son] at home. . . [H]e was concerned on him being harmful to other kids at home. We had never seen anything, but he was struggling with him. And he started noticing that he was starting to – oh, notice things around the building that they were living in. Um, dead animals, different concerning things." December 30, 2025 Transcript at 54-55. Claimant further testified that "[i]mmediately after speaking to" the father, claimant gave E "a brief overview" of the conversation "and asked [E] what she would like me to do[.]" December 30, 2025 Transcript at 55. Claimant testified that E directed her to find out if the outside counseling service was still working with the family, and claimant immediately spoke with the case manager there, giving her "a brief overview" of what the father had said, and the case manager told claimant that she was "on it." December 30, 2025 Transcript at 55-56.

In weighing this conflicting evidence, claimant's first-hand account of what the father told her is entitled to greater weight than the differing account presented through multiple layers of hearsay. Moreover, claimant's testimony that she "immediately" told E of the conversation and followed E's directive to involve the outside counseling service is entitled to greater weight than the principal's hearsay assertion that claimant did not inform E and disclosed confidential information to the case manager without E's permission. On these points, the facts have therefore been found in accordance with claimant's testimony. The principal's writings suggest that the employer may have considered claimant in compliance with the reporting policy had they believed claimant promptly relayed to E what the father had told claimant, and the weight of the evidence at hearing supports that claimant did promptly report the conversation to E. To the extent the policy also required claimant to personally report the matter to the principal, claimant's failure to do so amounted to, at most, ordinary negligence in failing to understand whether E qualified as an "administrator" for purposes of the reporting policy. As such, the employer has not met their burden to show that claimant violated this policy willfully or with wanton negligence.

Regarding the personal electronic device use expectation, the employer had a reasonable written policy prohibiting employees from texting students during school hours, "strongly discourag[ing]" such texts at all other times, and requiring that all text communications be "appropriate and professional." Exhibit 3 at 9. Claimant was asked at hearing, "[W]ere you aware that you weren't supposed to be texting students from your personal phone?" and claimant replied in relevant part, "Not really. I didn't take it as that." December 30, 2025 Transcript at 44. However, the employer provided evidence that claimant completed a training about the personal electronic device use policy on September 25, 2024, which claimant did not rebut. *See, e.g.*, Exhibit 3 at 5. For that reason, the weight of the evidence supports that claimant knew or should have known of the terms of the employer's written personal electronic device use policy in March and April 2025.

The employer submitted as evidence 88 pages of screenshots of text message conversations between claimant and a student dating from March and April 2025, including at least one conversation that

appears to have occurred on April 23, 2025, after claimant was instructed in writing not to have direct contact with the student. *See* Exhibit 2 at 12-13. Claimant did not dispute the authenticity of this evidence. The screenshots suggest that claimant texted the student on at least two dates and times when school was in session, which the policy explicitly prohibited. *See* Exhibit 2 at 12-13, 63-64. On one other occasion, claimant wrote that she would "confront" another student about spreading rumors, and that claimant would try to make the student "feel guilty for spreading [the rumors]." Exhibit 2 at 20-21, 26-27. On another occasion, claimant seemed to suggest that the student should stay home from school the following day after a conflict with classmates at a bus stop during which the student was threatened with violence. Exhibit 2 at 30-31. Most conversations seemed to involve the student experiencing difficulties with classmates, school staff, and family members, and it was reasonably apparent from the texts that intervention from a counselor or other qualified mental health professional was warranted.

In rebuttal, claimant testified that she felt "none of the topics [discussed in the texts]. . . were inappropriate" and that the text message examples cited at hearing by the employer as inappropriate and unprofessional were "taken out of context," with claimant denying, for example, that she actually intended to "confront" and "guilt trip" another student about spreading rumors, and maintaining that she only intended to apprise a school counselor of the situation. December 30, 2025 Transcript at 44, 48-50. Claimant described her intentions in engaging with the students by text as "just being a mom," and asserted with respect to one of the students that the student "refused to speak to anybody at all, including the counselor. And an outside counselor and the doctor actually suggested it was okay for her to speak with [claimant] in the matter because. . . [claimant] was the only person she was actually reaching out to at the time." December 30, 2025 Transcript at 44-45. Claimant was asked at hearing, "Did you specifically tell the counselor that you were texting the student?" and claimant replied, "I believe I did." Transcript at 45.

However, claimant's assertion that parties responsible for the students' welfare knew about and consented to claimant's extensive text conversations with the students is greatly undermined by the fact that a parent of each of the students complained to the school on April 15, 2025 about their discovery that claimant had been texting with their children and requesting that claimant cease doing so. It is therefore more likely than not that claimant knew the employer had not granted her any exception to the personal electronic device use policy, and that she knew or should have known that her actions in texting the students would likely result in a violation of that policy. Given the number of texts and their subject matter, it can reasonably be inferred that claimant acted with indifference to the consequences of her actions. The employer has therefore shown that claimant violated the policy with at least wanton negligence.

Furthermore, claimant's actions cannot be excused as an isolated instance of poor judgment. Claimant's texts to the students in violation of the employer's policy occurred on multiple occasions over a period of approximately six weeks, and therefore cannot be considered a "single or infrequent occurrence rather than a repeated act[.]" Therefore, claimant's conduct was not "isolated" within the meaning of the rule, and does not fall within its exculpatory provisions. Accordingly, claimant was discharged for willful or wantonly negligent behavior that was not an isolated instance of poor judgment, but instead was misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective August 3, 2025.

DECISION: Order No. 26-UI-317753 is affirmed.

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

DATE of Service: March 27, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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