

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0157

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 2, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective November 9, 2025 (decision # L0015016435). Claimant filed a timely request for hearing. On January 27, 2026, ALJ Parnell conducted a hearing, and on January 29, 2026 issued Order No. 26-UI-318532, affirming decision # L0015016435. On February 17, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dollar General employed claimant at one of their stores from September 2025 through November 12, 2025. Claimant generally was scheduled to work only on Wednesdays.

(2) The employer expected their employees to report for work as scheduled, and to notify the employer at least two hours in advance of their shift if they would be absent. Claimant understood these policies.

(3) On October 24, 2025, claimant was arrested. He remained in custody thereafter until November 25, 2025, when he was able to secure the bail amount required for his release. The charges did not stem from claimant's work for the employer. Claimant was scheduled to work on October 29, November 5, and November 12, 2025, but did not report for work on those dates due to his incarceration.

(4) On October 27 or 28, 2025, claimant's sister went to the store where claimant worked and told the assistant manager that claimant was in jail and would be absent from work on October 29, 2025 for that reason. The assistant manager told claimant's sister that three consecutive absences would likely result in claimant's discharge.

(5) At some point between October 29, 2025 and November 5, 2025, claimant called the store from jail to report that he would be absent on November 5, 2025, but the call went unanswered.

(6) At some point between November 5, 2025 and November 12, 2025, claimant called the store from jail to report that he would be absent from his November 12, 2025 shift. An employee told claimant that the manager was not at the store and took the message. It was unclear to claimant after that conversation whether he had already been discharged.

(7) On November 12, 2025, after claimant failed to report for his scheduled shift, the employer discharged claimant due to his absence from three consecutive shifts, and because the employer believed that claimant had not provided adequate notice that he would be absent from those shifts.

(8) At some time after his November 25, 2025 release on bail, claimant went to the store to inquire about his employment status and learned that he had been discharged on November 12, 2025.

(9) As of the January 27, 2026 hearing, the charges against claimant remained unresolved.

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).

The employer discharged claimant due to his absence from work on October 29, November 5, and November 12, 2025, and their belief that claimant failed to give advance notice that he would be absent from those shifts. The employer reasonably expected their employees to report for work as scheduled, and to notify the employer at least two hours in advance of their shift if they would be absent. Claimant understood these policies.

Claimant did not dispute that he was absent for the three shifts at issue, which he missed because he was in jail. The order under review concluded that claimant “willfully created the situation that made it impossible for him to comply with the employer’s policy or expectations,” and, citing *Weyerhaeuser Co. v. Employment Div.*, 107 Or App 505, 812 P2d 44 (1991), concluded that claimant therefore willfully or with wanton negligence repeatedly violated the employer’s attendance policy. Order No. 26-UI-318532 at 3. The record does not support this conclusion, and the facts of *Weyerhaeuser Co.* are distinguishable from the circumstances of claimant’s discharge.

In *Weyerhaeuser Co.*, the claimant had been convicted of a crime and granted probation; while employed by *Weyerhaeuser Co.*, the claimant knowingly consumed alcohol while off duty in violation of the terms of his probation; was sentenced to a six-month term of incarceration for that violation; and was discharged by the employer for failing to report for work while serving that sentence. *Weyerhaeuser*

Co. v. Employment Div. at 505. Here, in contrast to those facts, the record only shows that claimant was arrested on charges that remained unresolved as of the January 27, 2026 hearing date, and that he missed work while he was held in jail for approximately one month until he was able to post bail. The record does not show when claimant allegedly engaged in the actions which resulted in his arrest. At the time of the hearing claimant had not entered a guilty plea related to the charges. Transcript at 10. The employer has therefore failed to meet their burden of showing by a preponderance of the evidence that, during his tenure with the employer, claimant engaged in off-duty criminal conduct that he knew or should have known was likely to result in his incarceration and prevent him from reporting for work. Therefore, the employer has not shown that claimant's absence from work was a willful or wantonly negligent violation of their attendance policy.

As to the part of the attendance policy requiring advance notice that an employee would be absent, the parties offered conflicting evidence regarding claimant's efforts to comply with that policy. The employer's witness testified that the employer's records showed that claimant was recorded as "no-called no-showed" for each of the three consecutive shifts he missed prior to his discharge, and that the witness had no first-hand knowledge of the events leading to the discharge. Transcript at 6-7. In contrast, claimant's sister testified that prior to claimant's October 29, 2025 shift, she notified the assistant store manager in person that claimant would be absent from that shift, and claimant testified that he called the store prior to each of the two following shifts, getting no answer on the first occasion and leaving a detailed message for the store manager with the employee who answered on the second occasion. Transcript at 14, 16.

In weighing this evidence, the first-hand accounts of claimant and his sister are entitled to greater weight than the hearsay account contained in the employer's records, and the facts have been found accordingly. Therefore, the record shows that claimant gave adequate advance notice under the policy that he would be absent from the October 29 and November 12, 2025 shifts. Furthermore, while claimant did not successfully provide such notice regarding the November 5, 2025 shift, the record fails to show by a preponderance of the evidence that the failure was attributable to claimant's willful inaction or indifference to the employer's interests, rather than factors beyond his reasonable control. Accordingly, the employer has not shown that claimant willfully or with wanton negligence violated any part of their attendance policy. Claimant was therefore not discharged for misconduct.¹

For these 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-318532 is set aside, as outlined above.

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

DATE of Service: April 2, 2026

¹ Department records suggest that the employer has requested relief of charges based on this work separation. That request will continue to be adjudicated by the Department independently of claimant's appeal in this matter.

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 desisyong ito.

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.

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