

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0182**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 15, 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 # L0014590238). The employer filed a timely request for hearing. On February 13, 2026, ALJ Krueger conducted a hearing, and on February 17, 2026 issued Order No. 26-UI-320423, reversing decision # L0014590238 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective October 26, 2025. On February 24, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Blue Line Transportation Co., Inc. employed claimant as a fuel truck driver from March 3, 2025 through October 27, 2025.

(2) The employer expected their drivers to deposit fuel into the correct tanks, to deliver fuel from the supplier account designated in the order, and to avoid collisions. Claimant understood these expectations.

(3) On July 26, 2025, claimant was directed to deliver fuel to the tank of one gas station but mistakenly delivered it to another station because he had written down the information incorrectly. The employer warned claimant regarding this error.

(4) On September 5, 2025, claimant was delivering fuel into a tank meant to hold gasoline but mistakenly released both gasoline and diesel fuel into the tank. Claimant changed the source of the fuel being pumped from the truck into the tank, forgetting that portion of the truck contained diesel rather than gasoline. As a result, on September 15, 2025, the employer presented claimant with a "Last Chance Agreement," which claimant signed, stating that claimant was not to make any further errors. Transcript at 13.

(5) On October 25, 2025, claimant was directed to deliver fuel to a customer from one designated supplier account, BP, but mistakenly delivered fuel from a different account, Marathon, due to not paying close attention during the account selection process. Later that day, claimant accidentally caused the fuel truck he was driving to strike a yellow safety post at a customer's gas station because he lost sight of the post while maneuvering the truck. The collision caused damage to the truck's fender.

(6) On October 27, 2025, the employer discharged claimant for the October 25, 2025 account error and collision.

**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 two incidents that occurred on October 25, 2025. Although claimant was previously warned for other incidents, the initial focus of the discharge analysis is the proximate cause of the discharge, which is generally the last incident of misconduct before the discharge. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012; *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did). Therefore, the October 2025 incidents were the proximate causes of the employer's decision to discharge claimant.

The employer expected their drivers to deliver fuel from the supplier account designated in the order, and to avoid collisions. Claimant understood these expectations. The employer asserted that on October 25, 2025, claimant was to deliver fuel to a customer from a BP supplier account but instead loaded and delivered fuel from a Marathon account, and that claimant's truck struck a yellow safety post at a customer's gas station. Claimant did not dispute either assertion. The order under review concluded that claimant acted with wanton negligence with respect to the account error and ordinary negligence with respect to striking the post. Order No. 26-UI-320423 at 4. However, the record supports that both incidents resulted from ordinary negligence.

Regarding the supplier account error, the record suggests that loading fuel into a delivery truck was a multi-step process that differs somewhat between facilities. *See* Transcript at 41. Claimant testified that on October 25, 2025, he understood he was to load BP account fuel from a facility that dispensed fuel for both BP and Marathon accounts, and with "a lot going on" during the loading process he neglected to "card out," which was one of the steps in switching between the two supplies. Transcript at 25. Claimant denied being "distracted" during the loading process, but attributed his error to not "paying

attention.” Transcript at 25. The employer did not rebut claimant’s explanation of the error. On this evidence, the employer has not shown that claimant *consciously* failed to follow the proper procedures in loading the fuel. The employer’s past entreaties for claimant to generally exercise care and avoid errors in his work do not alter the fact that this particular error did not result from a conscious decision made with indifference to the consequences of his actions. As such, the error was caused by claimant’s failure to exercise due care or simple carelessness, and was therefore the result of ordinary negligence rather than wanton negligence.

Regarding the collision with the post later that day, claimant testified that a gas station attendant was outside the truck providing direction to claimant as he maneuvered the truck into place. The attendant “walked out of the way,” and as claimant looked for clearance on the left side of the truck, he lost sight of the post on the right side of the truck, causing the truck’s front fender to strike the post. Transcript at 27. The employer did not rebut claimant’s account of the incident, but asserted that claimant had made many fuel deliveries to that gas station, suggesting that he therefore should have been familiar with its layout, including the location of the post. Transcript at 12. As with claimant’s earlier error that day, the record shows only that claimant failed to exercise due care when operating the truck. The employer has not shown that claimant consciously drove the truck in a manner he knew was likely to result in a collision, or that he was indifferent to the consequences of his actions. Therefore, the collision resulted from ordinary negligence rather than wanton negligence. Accordingly, because claimant did not act willfully or with wanton negligence when he violated the employer’s expectations on October 25, 2025, his discharge was not for misconduct.

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-320423 is set aside, as outlined above.

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

**DATE of Service:** April 9, 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 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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