

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0207**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0013405678). The employer filed a timely request for hearing. On February 4, 2026, ALJ Hall conducted a hearing, and on February 12, 2026, issued Order No. 26-UI-320219, affirming decision # L0013405678. On March 2, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Lowe’s Home Centers, LLC employed claimant as a customer service associate at one of their stores from July 19, 2023 until September 3, 2025.

(2) The employer expected claimant to refrain from harassing coworkers. The employer also expected claimant to follow instructions and commands conveyed to him by the manager of the employer’s store. Claimant understood these expectations

(3) At some point on or around February 2025, the assistant store manager of the employer’s store made comments to claimant that claimant misunderstood to convey romantic interest in him. At or near that time, claimant obtained the assistant store manager’s phone number from her.

(4) Thereafter, in February, April, May, June, and July 2025, claimant made multiple unwanted calls and texts to the assistant store manager. In some of these communications, claimant asked to “hang out” with the assistant store manager or complimented her appearance. Transcript at 8. The assistant store manager did not respond to these communications.

(5) The employer’s store manager became aware of claimant’s unwanted communications with the assistant store manager. On August 3, 2025, the store manager held a coaching meeting with claimant. In the meeting, the store manager reviewed the employer’s harassment policy with claimant, and instructed him to refrain from calling or texting the assistant store manager.

(6) After claimant's August 3, 2025 meeting with the store manager, claimant attempted to call the assistant store manager multiple times: four times on August 10, 2025; once on August 21, 2025; once on August 24, 2025; and once on August 25, 2025. Claimant anticipated that the employer would interview the assistant store manager. Claimant's stated purpose in attempting to call the assistant store manager was to give her "a heads-up" that she would likely be interviewed by the employer, "so she could prepare in her head[.]" Transcript at 15.

(7) At or near the time of claimant's August 3, 2025 meeting with the store manager, the employer's human resources (HR) department began an investigation of claimant's numerous unwanted communications with the assistant store manager. The HR department interviewed claimant and the assistant store manager, and obtained call logs and text message information.

(8) Following the conclusion of the HR department's investigation, the employer determined that discharging claimant was warranted based on claimant's numerous attempted communications with the assistant store manager after he had been instructed during the August 3, 2025 meeting to stop calling and texting her. On September 3, 2025, the employer discharged claimant for that reason.

**CONCLUSIONS AND REASONS:** The employer discharged claimant 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 and good faith errors 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).

To be a "good faith error" a mistake must be made with the honest belief that one is acting rightly. *See Webster's Third New Int'l Dictionary* 978 (Unabridged ed. 2002) (defining "good faith" as "a state of mind indicating honesty and lawfulness of purpose : belief in one's legal title or right: belief that one's conduct is not unconscionable or that known circumstances do not require further investigation : absence of fraud, deceit, collusion, or gross negligence"). A claimant that sincerely, even if mistakenly, believed that the employer would excuse, condone or overlook a violation of its policy, and had factual basis for believing so, may have acted in good faith. *See Goin v. Employment Dept.*, 203 Or App 758, 126 P3d

734 (January 18, 2006)(Claimant's incorrect assumption caused her to violate the employer's policy, but she acted in good faith).

The order under review concluded that claimant willfully violated the employer's expectations by attempting to call the assistant store manager numerous times after being instructed in the August 3, 2025 meeting to refrain from doing so, which is supported by the record. Order No. 26-UI-320219 at 3. However, the order also concluded that claimant's violations did not constitute misconduct because they were good faith errors in that "[n]o evidence was developed at hearing indicating that claimant contacted the [assistant store manager] with malicious intent." Order No. 26-UI-320219 at 3. The record does not support that claimant's violations of the employer's expectations were good faith errors.

The employer discharged claimant because, after claimant was instructed by the store manager in the August 3, 2025 meeting to refrain from calling and texting the assistant store manager, claimant attempted to contact the assistant store manager by phone seven times over multiple different days. The proximate cause of claimant's discharge was therefore claimant's numerous failures to follow the store manager's instructions. *See* Transcript at 9 (when asked to identify the final incident leading to claimant's discharge, the store manager testified, "It was a culmination of the unwanted attention and harassment towards an individual that he had been coached on – that it needed to not continue anymore. The behaviors continued, which ultimately led to the termination."). Thus, the focus of the discharge analysis is claimant's failure to abide by the employer's expectation that he follow the store manager's instructions or commands.<sup>1</sup>

The record shows that, on August 3, 2025, the store manager held a coaching meeting with claimant. In the meeting, the store manager conveyed the clear instruction to claimant that he was to refrain from calling and texting the assistant store manager. Nevertheless, on seven occasions thereafter, between August 10 and 25, 2025, claimant attempted to call the assistant store manager.

Each of these constituted a violation of the store manager's command that claimant was to refrain from calling the assistant store manager. The record shows that these violations of the store manager's instructions were willful on claimant's part given that he testified that his purpose in attempting these calls was to give the assistant store manager "a heads-up" that she would likely be interviewed by the employer, "so she could prepare in her head[.]" Transcript at 15. These willful violations were not an isolated instance of poor judgment because they amounted to a repeated act or pattern that occurred seven times over four separate days. They also were not good faith errors because the store manager's instruction that claimant refrain from calling the assistant store manager was a simple command that was clearly conveyed. It therefore was not plausible that claimant would sincerely but mistakenly believe that the employer would condone claimant's multiple attempts to call the assistant store manager after directly being instructed not to do so.

For these reasons, claimant willfully violated the employer's expectation that, following the August 3, 2025 meeting, he refrain from calling the assistant store manager. These willful violations were not isolated instances of poor judgment or good faith errors. Accordingly, claimant was discharged for

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<sup>1</sup> *See e.g. Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *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).

misconduct and therefore is disqualified from receiving unemployment insurance benefits effective August 31, 2025.

**DECISION:** Order No. 26-UI-320219 is set aside, as outlined above.

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

**DATE of Service:** April 14, 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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