

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0221

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 21, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0015626611). The employer filed a timely request for hearing. On February 24, 2026, ALJ Wahl conducted a hearing at which claimant failed to appear, and on February 26, 2026, issued Order No. 26-UI-321624, affirming decision # L0015626611. On March 5, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer submitted a written argument with their application for review. EAB did not consider the employer's written argument because they did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Autozoners, LLC, employed claimant, most recently as the manager of their store located in Albany, Oregon, from 2013 until December 11, 2025.

(2) The employer expected employees to "properly account for the sale of merchandise[.]" Exhibit 1 at 2. Claimant was aware of this expectation because it was listed in the employer's employee handbook, which claimant acknowledged receiving many times during his employment, most recently in March 2025.

(3) On November 13, 2025, a store clerk at claimant's store took a part for his car from the store's inventory without paying for it. The clerk left the part's empty box on the store counter.

(4) On November 14, 2025, claimant arrived at work and found on the counter the empty box for the part the clerk had taken. Claimant looked up the part number in the employer's system and confirmed that it matched the clerk's car, which claimant knew the clerk had recently purchased.

(5) Later that evening, the store clerk came to the store to show his new car to coworkers. At that time, claimant confronted the clerk, and asked him if he would pay for the part that was missing from the box that morning. The clerk responded that he would pay for the part. However, the clerk did not immediately do so.

(6) Claimant did not insist that the clerk make immediate payment or discipline the clerk because he chose to give the clerk “the benefit of the doubt,” and trust the clerk’s stated intention to make the payment. Audio Record at 16:21.

(7) In November 2025, the employer’s regional loss prevention manager was investigating a separate matter involving a different clerk’s suspected improper use of price overriding at claimant’s store. In an interview with that clerk, the loss prevention manager learned of an allegation that claimant “was allowing [employees] to pick merchandise without it being paid for.” Audio Record at 14:19.

(8) On November 21, 2025, the loss prevention manager interviewed claimant about the allegation. In the interview, claimant generally denied allowing employees to take merchandise without paying. However, claimant did explain what had occurred on November 14, 2025: specifically, that he had discovered the box with the part missing; matched the part to the clerk’s car; and confronted the clerk later that day, at which time the clerk stated that he would pay for the part, but did not immediately do so. As of the date of the interview, the clerk had not paid for the part.

(9) On December 11, 2025, the employer discharged claimant based on his conduct on November 14, 2025, viewing claimant as having violated their expectation that he properly account for the sale of merchandise.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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 failed to meet their burden to prove that they discharged claimant for misconduct. The employer had a reasonable right to expect claimant to “properly account for the sale of merchandise.” Exhibit 1 at 2. Claimant was aware of this expectation, as it was listed in the employer’s employee handbook, which he had received many times during his tenure with the employer. Although the employer’s expectation to “properly account for the sale of merchandise” was rather general, given that claimant determined that the clerk had taken the part without paying for it, and that claimant did not

demand that the clerk make immediate payment or take disciplinary action against the clerk, the record is sufficient to conclude that claimant's conduct violated the employer's policy.

However, for an individual's actions to amount to misconduct under ORS 657.176(2)(a), it is required that the employer establish both that the individual violated the expectation, and that they did so willfully or with wanton negligence. Here, several aspects of the circumstances surrounding claimant's conduct on November 14, 2025 show claimant's conduct was not willful or wantonly negligent. In particular, the store clerk's act of taking the car part without paying for it happened when claimant was not present. When claimant became aware of the issue, on November 14, 2025, at the time he arrived at work, he took affirmative action by looking the part up in the employer's system and matching the part to the clerk's car. Then, later that same day, when the clerk came to the store to show coworkers his car, claimant confronted the clerk about the issue, at which time the clerk stated that he intended to pay for the part. Claimant did not insist on the clerk making immediate payment, and the part remained unpaid for as of a week later when the loss prevention manager interviewed claimant on November 21, 2025. However, claimant did not demand immediate payment because he trusted the clerk's stated intention to make the payment, and, on this record, it is plausible that claimant may have presumed the clerk would pay for the item within a short amount of time after November 14, 2025, but not as soon as November 21, 2025, such as if the clerk's next paycheck came after November 21, 2025.

Comparing these facts to the somewhat vague employer expectation that claimant "properly account for the sale of merchandise," the record fails to show that claimant willfully violated the policy. Exhibit 1 at 2. This is the case because the record lacks evidence that it was claimant's deliberate intent to violate the policy when he confronted the clerk about taking the part without paying, but then failed to demand immediate payment or take disciplinary action against the clerk. The record also fails to show that claimant violated the employer's policy with wanton negligence. This is so because, for a violation to be wantonly negligent, it is required that the individual be indifferent to the consequences of their actions or failures to act. Here, the record does not show that claimant was indifferent to the consequences because he took affirmative action to match the part to the clerk's car, confronted the clerk about the issue, and obtained the clerk's stated intention to pay for the item. Though claimant did not insist on immediate payment and the item remained unpaid for as of November 21, 2025, these points, at most, establish that claimant violated the employer's expectation with ordinary negligence, which is not sufficient to constitute misconduct. Because the employer did not prove that claimant acted with indifference to the consequences of his actions or failures to act, the record fails to show that claimant violated the employer's policy with wanton negligence.

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-321624 is affirmed.

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

DATE of Service: April 17, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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