

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0222

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 2, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0014409983). The employer filed a timely request for hearing. On February 9, 2026, ALJ Griffith conducted a hearing, and on February 13, 2026 issued Order No. 26-UI-320361, affirming decision # L0014409983. On March 5, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Cascade KB, LLC employed claimant from August 17, 2023 through October 9, 2025 as a kitchen leader at their restaurants in Salem and Bend, Oregon.

(2) On or around August 1, 2025, claimant transferred from the employer's Salem restaurant to the one in Bend. Claimant moved from Salem to Bend at that time, as the distance between the two cities would make a daily commute infeasible for claimant. Management and staff at the Salem restaurant had concerns about claimant's behavior in the time leading up to the transfer, which they largely attributed to claimant's likely abuse of alcohol.

(3) Early in the morning of September 3, 2025, claimant called one of the employer's owners, "D," to "say goodbye and that he was going to kill himself." Transcript at 7. D spoke with claimant at length, urging him to seek immediate help. With D's assistance, claimant entered a rehabilitation program that day and remained there for approximately two weeks. Claimant returned to work on September 21, 2025, and worked some shifts that week.

(4) On September 27, 2025, claimant called the restaurant prior to his scheduled shift to report that he would be absent due to illness. Claimant then came to the restaurant, appearing intoxicated, "belligerent[,] and not making a lot of sense." Transcript at 8. At the staff's urging, D spoke with claimant by phone and claimant agreed to leave and focus on being ready for his shift the following day.

After ending the call and leaving the restaurant, claimant texted the restaurant's general manager, repeatedly using "the N-word" and telling him, in relevant part, "Don't effing rat me out again." Transcript at 9.

(5) On September 28, 2025, prior to the start of his scheduled shift, claimant texted the general manager asking to be excused from work that day so that he could interview for entry into a nearby sober living facility. The general manager denied the request, and claimant suggested that he had been "close to" committing suicide the previous night and would not be at work because he "need[ed] to prioritize [his] mental health and make sure that [he] stay[s] alive." Transcript at 10.

(6) On September 29, 2025, D attempted to contact claimant to find out if he would be coming to work that day. When D eventually reached claimant, he told claimant he

thought it would be best for [claimant] to not feel pressured to come back to work and instead let [the employer] know when he's ready. [D] asked [claimant] if he wanted to return to work at the Bend [restaurant], and he said emphatically, yes. [D] then asked [claimant] to let [D] know a few days in advance when he'd like to return to work so [the employer] could get him back on schedule. [Claimant] agreed to this and was thankful he no longer had to worry about [the employer] expecting him to return to work at a certain date.

Transcript at 12.

(7) On October 1, 2025, claimant texted D that he had moved into a sober living facility in Redmond, Oregon, which is within commuting distance of Bend.

(8) On October 2, 2025, claimant texted D that he had moved back to Salem, and later that day asked if he could transfer back to the Salem restaurant. D responded that he would need to think about it due to claimant's attendance and behavior over the past month.

(9) On October 7, 2025, after consulting with the general manager of the Salem restaurant, D decided to deny claimant's transfer request, as the Salem restaurant management and staff did not want claimant to return due to his behavior there preceding the August 1, 2025 transfer.

(10) On October 9, 2025, D called claimant and told him that the transfer request was denied and that he was discharging claimant based on his behavior since September 27, 2025. D considered claimant to have abandoned his job by moving to Salem on October 1 or 2, 2025, and this was the primary reason for discharging him.

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). Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant on October 9, 2025, telling him that the decision was made based on his behavior since September 27, 2025. The initial focus of the misconduct analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009; *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).

From September 27 through 29, 2025, claimant was absent from three scheduled shifts, came to the restaurant under the influence of alcohol after being excused from one of those shifts, and sent offensive text messages to the restaurant’s general manager. The employer’s management was aware of this conduct essentially as it occurred, and as of September 29, 2025, had decided not to discharge claimant for it. Instead, on that date, D granted claimant indefinite leave to seek treatment for his alcohol use and mental health issues, telling claimant that he could return to the work schedule at the Bend restaurant whenever he desired, with a few days’ notice. However, D learned on October 2, 2025 that claimant had moved back to Salem, and by October 7, 2025, D had concluded that allowing claimant to transfer back to the Salem restaurant was inadvisable. D thereafter believed that claimant had abandoned his job by moving to Salem, and testified that the “final reason that [he] terminated” claimant was this perceived job abandonment, rather than the September 2025 incidents. Transcript at 15. Therefore, the proximate cause of claimant’s discharge was his move to Salem, and it is the initial focus of the misconduct analysis.

D testified that the employer had a policy prohibiting “excessive” absenteeism, without that term being further defined. Transcript at 19. D also testified that the employer did not have any policy regarding how far away from their workplace an employee could reside. Transcript at 18. On September 29, 2025, D gave claimant the option to be removed from the Bend restaurant work schedule and “let [D] know a few days in advance when he’d like to return to work so [the employer] could get him back on schedule,” and claimant agreed. Transcript at 12. When claimant moved to Salem two or three days later, such a move would not have reasonably appeared to claimant to violate the employer’s expectations, since he was on an indefinite period of leave that claimant could end at a few days’ notice. Claimant’s apparent inability to commute from Salem to Bend for work did not necessarily mean that claimant would, or intended to, violate the employer’s attendance expectations because, at that time, claimant was not scheduled to work in Bend, and did not anticipate being scheduled to work there in the near future.

Moreover, as claimant had moved frequently over the preceding approximately two months—from Salem to Bend to Redmond to Salem—it is unclear how long claimant intended his latest Salem move to

last or if he intended to return to the Bend area once his health conditions stabilized, particularly after his request that the employer transfer him back to the Salem restaurant was denied. Therefore, if the employer eventually rescinded their offer to claimant of indefinite leave and placed him back on the Bend restaurant work schedule, it is possible he would have moved back to the Bend area and reported for work as directed. However, the employer discharged claimant without first rescinding the offer of indefinite leave and putting claimant back on the Bend restaurant work schedule, and whether claimant would have violated the employer's expectation in that circumstance by remaining in Salem and not reporting for work in Bend is a matter of speculation. Accordingly, the employer has not met their burden to show that the proximate cause of claimant's discharge was a willful or wantonly negligent violation of a reasonable employer expectation, and he was therefore not discharged for misconduct.¹

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 26-UI-320361 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ Because the proximate cause of claimant's discharge was not shown to be a willful or wantonly negligent violation of a reasonable employer expectation, it is not necessary to assess whether claimant's conduct was isolated, and therefore to further analyze claimant's conduct prior to October 2, 2025.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
 Email: appealsboard@employ.oregon.gov
 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.