

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0226**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 11, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective September 21, 2025 through January 17, 2026 (decision # L0014543262). Claimant filed a timely request for hearing. On February 13, 2026, ALJ Christon conducted a hearing, and on February 17, 2026 issued Order No. 26-UI-320509, modifying decision # L0014543262 by concluding that claimant was discharged for misconduct, and was disqualified from benefits effective September 21, 2025 and until requalified under Department law. On March 6, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Reeds Fuel Company employed claimant as a truck driver from April 22, 2025 through September 24, 2025.

(2) The employer maintained a written safety policy which stated, in relevant part, that “[A]ccidents are to be reduced or eliminated by every reasonable precaution... [and that] [i]t shall be the responsibility and specific part of each company driver’s job to work toward this goal.” Exhibit 1 at 12. This policy was contained in the employer’s handbook, a copy of which was provided to claimant at the time of hire.

(3) On May 20, 2025, June 13, 2025, and September 19, 2025, the employer issued claimant written warnings relating to damage that occurred to the company truck he was driving while he was loading or unloading product at customers’ sites.

(4) On September 24, 2025, claimant was at the site of a customer, a mill, and needed to unload excess wood chips that he had loaded onto his work truck. The mill’s supervisor directed claimant to back up his truck towards a wall to unload the chips, which claimant did. As he did so, claimant looked behind him to make sure that he did not hit the wall, and saw that he was in the clear. However, claimant did not also look up behind him while he was backing up. As a result, claimant failed to notice that he was

in danger of hitting the metal railing of a set of stairs behind him. Claimant then hit the railing, which caused damage both to the top rear of his truck's trailer and to the stairwell railing.

(5) The employer's operations manager reviewed the incident. In doing so, he came to believe that, in addition to the damage to the top of the trailer, claimant had also damaged the sidewall of one of the truck's tires when driving onto a scale; and that claimant had damaged the truck's tarp motor in another incident. However, claimant did not cause the damage to the tire's sidewall, and the damage to the tarp motor had occurred at an earlier date. Based on the operations manager's assessment of the damage claimant had caused, the employer discharged claimant on September 24, 2025.

**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 on September 24, 2025, after determining that he had caused damage that day to the railing of a set of stairs and the top of his truck's trailer; the sidewall of one of the truck's tires; and the truck's tarp motor. As a preliminary matter, the employer has not met their burden to show either that claimant was personally responsible for the tire damage, or that the damage to the tarp motor occurred on September 24, 2025. As to the tire damage, the operations manager testified that it occurred when claimant "pulled on the scales [and] side walled a tire" on September 24, 2025. Transcript at 8. By contrast, claimant testified that he did not damage the tire, and did not know how it had happened. The employer did not provide corroborating evidence to support their assertion that claimant, personally, had caused the tire damage. Transcript at 23. Therefore, the evidence on the tire damage is, at best, equally balanced, and the employer has not shown by a preponderance of the evidence that it was attributable to claimant.

The operations manager likewise testified that the damage to the tarp motor occurred on September 24, 2025. Transcript at 14. However, claimant testified that while he had caused that damage, it occurred at an earlier date at a different customer site. Transcript at 27. Claimant's account is supported by the employer's own documentary evidence, which contains four "Disciplinary Action" forms, dated May 20, 2025, June 13, 2025, September 19, 2025, and September 24, 2025. Exhibit 1 at 8-11. The form dated September 24, 2025 discusses only damage to the tire sidewall and the customer's stairs. Exhibit 1 at 8. By contrast, damage to a tarp motor *is* discussed on the form dated May 20, 2025. Exhibit 1 at 11. Thus, the preponderance of the evidence shows that damage to the tarp motor did not occur on September 24, 2025.

In sum, the record shows that the only damage that claimant caused on September 24, 2025 was to the customer's stair railing and the top rear of the truck's trailer as claimant was backing up to unload excess wood chips, and the facts have been found accordingly. Because the incident in which this damage occurred was the last incident that took place before the employer discharged claimant, it is properly viewed as the proximate cause of the employer's decision to discharge him.<sup>1</sup> As such, unless the record shows that claimant's conduct on September 24, 2025 constituted a willful or wantonly negligent violation of the employer's expectations, it is unnecessary to consider whether claimant's conduct during the earlier accidents mentioned in the record was also willful or wantonly negligent. The record shows that claimant's conduct on September 24, 2025 was not willful or wantonly negligent.

The employer reasonably expected employees to take precautions to avoid accidents while driving. On September 24, 2025, claimant damaged both customer property and the employer's truck by failing to look upwards while he was backing up towards the wall where he intended to unload excess wood chips. The record shows that claimant did look backwards towards the wall while backing up; and, further, that he did so at the direction of the mill's supervisor. Even if a driver of ordinary prudence in those circumstances would have looked upwards while backing up, the record does not show that that claimant's failure to do so was the result of anything more than ordinary negligence. For conduct to be considered wantonly negligent, the record must show, in relevant part, that claimant was indifferent to the consequences of his actions. The employer has not met their burden to show that he was. As noted above, claimant acted in accordance with directions from the mill's supervisor, and looked backwards while backing up to assess whether he had sufficient clearance. These facts show that claimant was not indifferent to the consequences of his actions, but that he was, instead, taking care to operate the truck without causing damage. The fact that he nevertheless failed to account for an additional factor (the apparently elevated stairway and railings) and, as a result, *did* cause damage, shows only that claimant was not aware of this additional hazard. As such, claimant's conduct resulting in the accident and related damage to the customer's and employer's property was, at worst, ordinary negligence, which is not misconduct.

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

**DECISION:** Order No. 26-UI-320509 is set aside, as outlined above.

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

**DATE of Service:** April 17, 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.

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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).

**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**

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**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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