

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0229

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 23, 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 14, 2025 (decision # L0013600564).¹ Claimant filed a timely request for hearing. On January 21, 2026, and continued to February 6, 2026, ALJ L. Lee conducted a hearing, and on February 17, 2026 issued Order No. 26-UI-320485, affirming decision # L0013600564. On March 9, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Sierra Enterprises Oregon, Inc. employed claimant from May 21, 2024 through September 19, 2025. Claimant worked for the employer as the district manager of several of the employer's gas stations and convenience stores throughout the state of Oregon. In that position, claimant managed the store managers who managed the individual stores within claimant's district.

(2) The employer maintained a written anti-harassment policy which prohibited, in relevant part, "unwelcome verbal or physical conduct which harasses, disrupts, or interferes with the individual's work performance or creates an intimidating, offensive, or hostile environment." Exhibit 2 at 12. The policy defined harassment as "unwelcome conduct directed toward an employee that illegally discriminates against that employee, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment." Exhibit 2 at 12. Claimant was aware of this policy. The employer also maintained a policy which prohibited employees from hiring or

¹ Decision # L0013600564 stated that claimant was denied benefits from September 14, 2025 to September 19, 2026. However, decision # L0013600564 should have said that claimant was disqualified from receiving benefits beginning Sunday, September 14, 2025 and until she earned four times her weekly benefit amount. See ORS 657.176.

supervising family members, close friends, or romantic partners, to avoid conflicts of interest. This policy was not contained within the employer's handbook.

(3) On October 2, 2024, the employer's human resources (HR) manager notified claimant via text that a store manager in claimant's district had hired her daughter to work under her at the same store, and asked claimant if she knew of this fact because they had "just had the conversation about hiring relatives[.]" Exhibit 5 at 47. In response, claimant said, "No I was not. And that's a no go." Exhibit 5 at 47.

(4) At some point after October 2, 2024, claimant hired "JC," with whom she had begun a romantic relationship in or around December 2023, to work as a store manager in her district. Claimant had previously worked with JC at another job. The employer was aware that claimant and JC had previously worked together and were friends, but claimant did not inform them of her ongoing romantic relationship with him, and the employer was not aware of the relationship at or after the time of his hire. Sometime later, claimant contacted "JK," with whom claimant had also worked at a previous job, to offer her a position with the employer that also directly reported to claimant. Shortly after JK was hired, claimant invited her to join claimant and JC in their relationship. JK accepted but bowed out of the arrangement after approximately a week. Claimant did not disclose this arrangement to the employer at the time, and they were not otherwise aware of it.

(5) JC and JK eventually decided that they wished to be in an exclusive relationship with each other, and not with claimant. In June 2025, due largely to this development, claimant and JC broke up. The breakup was contentious, as claimant wished to continue a relationship or friendship with JC, while JC no longer wished to have a personal relationship with claimant and therefore sought to distance himself. Following the breakup, and despite JC's request for "time and space," claimant repeatedly contacted JC via text message, using both her personal and work phones, as well as by other means such as Facebook Messenger. Exhibit 5 at 111. In some of these messages, which spanned the course of several months, claimant attempted to convince JC to spend time with her, talk to her, or agree to a "timeline" by which they might resume some sort of personal relationship. Exhibit 5 at 104. On several occasions during these exchanges, JC explicitly asked claimant to leave him alone, but claimant did not do so. For instance, in one message, JC responded to claimant, "We aren't together anymore and the fact you keep begging for it is starting to border on harassment and stalking and it's getting creepy[.]" Exhibit 5 at 65.

(6) On or around September 12, 2025, claimant traveled from the Portland, Oregon area to open a new store for the employer in a different part of the state. Out of several store managers, claimant chose JC to accompany her for the new store opening. However, by the morning of September 13, 2025, relations between claimant and JC had soured to the point that the latter felt unsafe and sought to return home early. JC texted these concerns to the employer's chief operations officer (COO), explaining, in relevant part:

[Claimant's] and my personal life has rolled over into work, when I have begged and pleaded to only be left alone and be allowed to do my job she is down right [*sic*] refusing and instead keeps insisting that she be allowed certain benefits and I have repeatedly said no.

Now this has escalated to outright fighting because I am basically trapped here and I feel duty bound to try to do my job . . . She has sent several texts from her work phone that I told her

multiple times to stop and to leave me alone because I blocked her personal phone trying to just be work, and then she started blowing up my Facebook messenger refusing to leave me alone, I finally blocked her today because I was trying to be able to work alongside her.

She constantly dangles the assistant [district manager] position over my head saying things like “well if you want the position we need to be “friends” or “I can’t work along side you if we aren’t friends[.]” I have told her now a few times that if it means working along her like this I do not want it, I told her that I cannot work alongside her as her assistant because she will just try to leverage it for more and that I am your employee and you are my boss. If some form of work based friendship can form over time then fine, but all she is doing is pushing and pushing . . .

Please help me so I can get away for my own safety and not have to out right quit my job just to get away.

I am honestly afraid of being around her and have no safe way to really get away. If I try to go to my hotel and pack I am worried she will follow and start problems there.

Exhibit 5 at 50-51. In response, the COO recommended that JC not communicate with claimant until the COO could speak to her. JC did as directed but was concerned about being able to leave because claimant was waiting for him outside of the hotel. At the direction of the HR director, the COO recommended that JC claim that he had a family emergency so that he could leave without arousing claimant’s suspicion. JC did so and then returned home.

(7) On September 15, 2025, the HR manager contacted claimant, informed her of the allegations against her, and asked her to provide any information she had which might explain her side of the story. Thereafter, the HR manager investigated the matter. During the course of the investigation, JK provided a witness statement which stated, among other things, that after claimant and JC broke up, claimant “refused to let him go,” that claimant “used her job and power within [*sic*] to be around [JC] and hang things like the assistant [district manager] position over [JC’s and JK’s] heads,” and that claimant insisted that she and JC had to be friends in order for JC to be given the assistant district manager position. Exhibit 5 at 109-110.

(8) After further investigating the matter, the employer decided that claimant had engaged in a pattern of harassment, in violation of their policy. On September 19, 2025, the employer discharged claimant for that reason.

CONCLUSIONS AND REASONS: Claimant was discharged 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 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).

The employer discharged claimant because she had been engaging in a pattern of harassment, in violation of their anti-harassment policy. As a preliminary matter, the record shows that claimant also violated the employer’s policy which prohibited employees from hiring or supervising family members, close friends, or romantic partners. However, while the employer appears to have considered the latter violations when deciding to discharge claimant, the record clearly shows that the employer would not have discharged claimant for the latter reason alone. For instance, the employer’s witness, their HR manager, testified, “[I]f the only thing that had come out was that there had been a relationship [between claimant and JC or JK] . . . we wouldn’t have fired [claimant] for just that The harassment was what she was terminated for.” February 6, 2026 Transcript at 63. Thus, claimant’s violation of the anti-harassment policy was the proximate cause of the discharge, and therefore the proper focus of the misconduct analysis.²

It should also be noted that the conduct for which claimant was discharged was connected with work, despite the fact that some of the conduct may have occurred outside of working hours, away from the employer’s premises, or without the use of the employer’s devices or equipment. At hearing and in her documentary submissions, claimant suggested that her interactions which took place in the context of her private relationships with JC and JK were not connected to work.³ However, settled case law shows that claimant’s conduct was connected with work. Under *Sun Veneer v. Employment Div.*, 105 Or App 198, 804 P2d 1174 (1991), off-duty conduct must affect or have a reasonable likelihood of affecting the employee’s work or the employer’s workplace to constitute work-connected misconduct. Here, the record unambiguously shows that claimant’s conduct impacted, among other things, JC’s ability to perform his work, as he was concerned that he could not be in contact with claimant while she repeatedly insisted that he continue a personal relationship with her. Thus, claimant’s conduct, even when it took place outside of work hours, was work-related.

² 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).

³ See, e.g., Claimant’s written narrative submitted into the hearing record, in which she asserted, in relevant part: “My personal relationships are separate from my work performance. The employer has conflated a personal relationship breakdown with workplace misconduct. Oregon law does not permit employers to terminate employees for their personal lives unless there is a clear, direct connection to work performance or violation of a written, communicated policy.” Exhibit 3 at 5.

Claimant's conduct in repeatedly contacting JC about personal matters and insisting that he resume a personal relationship with her, despite his repeated requests that she stop doing so, violated the employer's anti-harassment policy. In relevant part, that policy prohibited "unwelcome conduct directed toward an employee that . . . unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment." The record shows that claimant's repeated contacts with JC about personal matters both interfered with his work performance and created an intimidating, hostile, or offensive work environment for JC.⁴ This was evidenced by, for example, the fact that JC was so upset by claimant's conduct while they were in a different part of the state for the opening of a new store that he was considering quitting his job, and required intervention from higher management so that he could feel safe returning home without arousing claimant's suspicions. Thus, claimant violated the employer's policy.

Claimant was aware of the employer's policy. Further, even if claimant believed that she was justified in insisting that JC maintain a personal relationship with her, she was aware, by way of JC's repeated requests that she leave him alone, that her continued contacts with him about personal matters was unwanted. Thus, claimant knew or at least had reason to know that continuing to engage with JC in that manner violated the employer's anti-harassment policy. Because she continued to do so despite knowing it would violate the anti-harassment policy, her conduct was at least a wantonly negligent violation of the policy.

Claimant's conduct cannot be excused as an isolated instance of poor judgment because her conduct was not isolated. Claimant repeatedly made unwanted contacts with JC about personal matters, despite his requests that she not do so, over the course of several months. This shows that claimant's conduct was a repeated act, rather than a single or infrequent occurrence. Additionally, while claimant's violation of the employer's policy forbidding employees from hiring or supervising their intimate relations was not the proximate cause of her discharge, the record nevertheless shows that she violated that policy with at least wanton negligence.

Claimant repeatedly asserted in the record that she did not believe she was required to disclose her personal relationship with JC (or JK) to the employer, primarily because that policy was not contained in the employee handbook.⁵ This argument fails, however, because the record shows that claimant was aware of the policy, regardless of its absence from the employee handbook, before she hired either JC or JK. On October 2, 2024, before either JC or JK were hired, claimant and the HR manager engaged in a text message conversation in which the HR manager reiterated the policy, after one of the store managers in claimant's district had hired her own daughter to work at her store. During the conversation, claimant acknowledged that she knew this was not permissible.

Based on this knowledge, claimant most likely knew, or at least had reason to know, that the employer's policy would not allow her to hire or supervise people with whom she had an intimate relationship. Further, even if the employer had not explicitly stated that romantic partners, such as JC was to claimant, were included in that policy, claimant could have reasonably ascertained that they were

⁴ The record suggests that the same could be said regarding claimant's interactions with JK. However, as the evidence in the record primarily focuses on claimant's interactions with JC, and as she apparently had a longer and more extensive personal relationship with him, this analysis primarily focuses on claimant's conduct as it related to JC.

⁵ See, e.g., January 21, 2026 Transcript at 42.

because the purpose of the policy was to avoid conflicts of interest between managers and the employees they hired or supervised. Given the obvious conflict of interest between claimant and her hiring and supervising of JC, claimant knew or should have known that hiring and supervising him would violate this policy. Because she did so without any apparent consideration for the consequences of her actions (such as disclosing the relationship to the employer before he was hired, so as to determine whether she would be permitted to be included in his employment decisions), claimant's decision to hire and supervise JC while they had an intimate personal relationship was at least a wantonly negligent violation of the employer's policy. This further shows that the wantonly negligent conduct for which claimant was discharged was not isolated.

For the above reasons, claimant was discharged for a willful or wantonly negligent violation of the employer's policy, and that violation was not an isolated instance of poor judgment. Therefore, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective September 14, 2025.

DECISION: Order No. 26-UI-320485 is affirmed.

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

DATE of Service: April 24, 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 الاستئناف 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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