

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0254

Reversed & Remanded

PROCEDURAL HISTORY: On August 12, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective May 4, 2025 (decision # L0012638127).¹ Claimant filed a timely request for hearing. On February 17, 2026, ALJ Hall conducted a hearing, and on February 25, 2026 issued Order No. 26-UI-321517, reversing decision # L0012638127 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On March 13, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument requested that EAB consider information that was not part of the hearing record, including Exhibit 1, which the ALJ declined to admit as evidence. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing in reaching this decision. EAB also considered any parts of the employer's argument that were based on the hearing record.

For reasons explained below, this matter is remanded to the Office of Administrative Hearings (OAH) for additional development of the record. The parties may offer new information such as that contained in Exhibit 1 into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

¹ Decision # L0012638127 stated that claimant was denied benefits from May 4, 2025 to May 10, 2025. However, decision # L0012638127 should have stated that claimant was disqualified from receiving benefits beginning May 4, 2025 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

FINDINGS OF FACT: (1) Do Good Multnomah employed claimant from April 23, 2024 through June 4, 2025. The employer operated a social services program. Claimant worked as a housekeeper for the first six months of her employment, and a case manager thereafter. Claimant had not previously worked elsewhere as a case manager.

(2) The employer had written policies regarding maintaining professional boundaries with their program’s current and former participants.² The policies prohibited employees from engaging in activities including:

[S]haring [their] personal phone number. . . [c]alling or text messaging about personal information[,] [t]alking to participants after work hours and/or on days off[,] engag[ing] in activities with participants that are not within [the employee’s] position, scope, or practice. . . meeting with participants socially. . . driving or riding in personal [vehicles with participants]. . . [giving, loaning or receiving] money or personal items/gifts of monetary value to [or from] any participant. . . [or meeting] participants offsite for case management or any other reason without approval of [the employee’s] program manager.

Transcript at 7. The policies further specified, “Socially engaging with participants outside of work hours is not appropriate and will not be tolerated. You should definitely not under any circumstances engage in any personal relationship which includes meeting offsite, engaging in any romantic or sexual behaviors or other personal friendship.” Transcript at 9. The employer typically presented these policies to new employees in a “slide show” during orientation and made an electronic copy available to them for review at any time. Transcript at 37. Claimant attended an orientation in April 2024 when she began working as a housekeeper but did not attend another orientation when she became a case manager.

(3) On May 8, 2025, the employer received an email from another organization reporting that claimant had recently come to their offices with a 93-year-old former participant of the employer’s program, seeking assistance in obtaining housing for the former participant. That former participant had last used the employer’s services on December 12, 2024. The organization expressed concern that, among other things, claimant said or implied that she was acting under the employer’s authority in attending the meeting, and that the employer might consider the apparent relationship between claimant and the former participant improper. The day after receiving the email, the employer began an investigation of this complaint and placed claimant on paid administrative leave.

(4) During the employer’s investigation, they discovered that claimant had been texting with the former participant about the two setting up a meeting for May 5, 2025, wherein claimant was to return some property to the participant that was in claimant’s possession. In December 2024, when the participant stopped using the employer’s services, the participant left numerous belongings in a storage locker belonging to the employer. By late April or early May 2025, the employer had directed claimant to arrange for the participant to reclaim the belongings. Claimant moved many of the belongings to a private storage locker leased by the participant in another city, but not all of the belongings fit there, so claimant retained some of them in her own possession. Items retained by claimant included an iPad, a

² A “former participant” for purposes of these policies included one who had used the employer’s services in the preceding six months. Transcript at 8-9.

coffee maker, a safe, and cremated remains. On or before May 9, 2025, claimant delivered these items to a motel where the participant was temporarily residing, and “brought her breakfast.” Transcript at 28.

(5) On June 4, 2025, the employer concluded their investigation and discharged claimant based on their belief that claimant had violated their policies by having “unauthorized offsite [interactions] with a former participant.” Transcript at 6.

CONCLUSIONS AND REASONS: Order No. 26-UI-321517 is set aside and the matter remanded for further development of the record.

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).

The employer discharged claimant because they believed she violated their policies prohibiting unauthorized offsite interactions with a former program participant. The record, as presently developed, contains conflicting information about what claimant knew or should have known regarding these policies. The employer’s witness testified that the policies were presented to all employees, including claimant, through an orientation at hire, and that the employer possessed an acknowledgement of receipt of the policies signed by claimant on April 23, 2024. Transcript at 9.

In contrast, claimant testified that she recalled her orientation, undertaken in preparation for work as a housekeeper, focused on payroll and benefit issues rather than policies related to professional boundaries with program participants. Transcript at 39. Claimant also testified she never received or was given access to the written policies. Transcript at 39. However, the record shows that claimant generally understood the concept of professional boundaries and that the employer expected their case managers to respect them. Claimant testified that she considered her interactions with the former participant to be within “a real gray area of professional boundaries,” and that attending the housing intake meeting at the other organization “probably wasn’t [within] professional boundaries of helping a person.” Transcript at 24-25, 31.

For reasons discussed below, further development of the record is needed regarding the extent of claimant’s interactions with the former participant. At the remand hearing, the parties may also offer further evidence regarding what claimant knew or should have known about the employer’s written policies, and the order on remand should assess what policies, if any, the weight of the evidence shows claimant received, was given access to, or otherwise knew or should have known about during her employment.

Claimant did not dispute that she had offsite interactions with the former participant based around two issues: the return of property that had been in the employer's possession, and an effort to secure housing for the participant. The order under review concluded that these interactions were willful or wantonly negligent violations of the employer's policies, but could be excused as good faith errors. Order No. 26-UI-321517 at 4. The record as presently developed does not support these conclusions, in part because the record suggests that claimant's interactions may not have been limited to having involved only those two issues, and further development on that point is warranted.

The employer's witness testified regarding the contents of the email from the organization at which the former participant was seeking housing. The witness testified that, according to the email, claimant had "indicated that she worked for [the employer]" at the intake appointment and that claimant had signed a release of information naming claimant "as an emergency contact for the participant." Transcript at 14. According to the witness, the email also alleged that claimant "had been assisting [the former participant] with. . . transportation and other activities for several months" and that claimant "had been present. . . [to go out to] a bank." Transcript at 14. Further inquiry into the full extent of claimant's interactions with the former participant is necessary to determine whether claimant willfully or with wanton negligence violated a reasonable employer policy and, if so, whether each such violation could be excused as a good faith error.

On remand, inquiry should be made into all telephonic, electronic, and in-person contacts claimant had with, or regarding, the former participant after December 12, 2024, including whether claimant participated in, provided advice regarding, or was present for any banking or similar financial transaction or fiduciary or legal matter. Further, inquiry should be made as to how the organization that emailed the employer learned of claimant's affiliation with the employer if, as claimant testified, she "did not tell them that [she] was [the participant's] case manager. . . [or sign] any paperwork saying that [she] was her case manager;" or whether the employer contends that claimant held herself out as representing the employer in any other context related to the former participant. Transcript at 23.

Additionally, when asked at hearing if claimant "believe[d] that [her] interactions with the participant fell within [her] job duties with the Employer," claimant responded, "I felt it was in good faith." Transcript at 29. Inquiry on remand should clarify whether claimant meant she was merely acting with good intentions in helping the former participant, or that she was acting on the belief that the employer would view her activities as within the scope of her employment; and whether claimant sought approval for, or apprised her supervisor of, each offsite interaction with the former participant and, if not, why she did not do so if she believed the employer would approve of her actions. Additional inquiry may be made as to any other factors relevant to the misconduct analysis.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 26-UI-321517 is reversed and this matter remanded to OAH for another hearing and order.

DECISION: Order No. 26-UI-321517 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 24, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-321517 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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 محكمة 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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