EO: Intrastate
BYE: 04-Apr-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

174
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0276

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 10, 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 # L0014508747). The employer filed a timely request for hearing. On February 24, 2026, ALJ Krueger conducted a hearing, and on February 27, 2026 issued Order No. 26-UI-321792, reversing decision # L0014508747 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective November 2, 2025. On March 19, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's March 19, 2026 written argument or the employer's March 31, 2026 written argument because the parties did not state that they provided a copy of their argument to the other party as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB considered claimant's April 14, 2026 written argument in reaching this decision.

Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1) (August 1, 2004). In particular, claimant objected to the admission of Exhibit 2 because the employer submitted it to the Office of Administrative Hearings (OAH) after the hearing. The employer submitted Exhibit 2 after the hearing because an attempt to submit it to OAH prior to the hearing by email failed due to an error in typing OAH's email address. OAR 471-040-0023 (August 1, 2004) provides, in relevant part:

> * * *
>
> (4) Prior to commencement of an evidentiary hearing that is held by telephone, each party and the Department shall provide to all other parties and to the Department copies of documentary evidence that it will seek to introduce into the record.

> (5) Nothing in this rule precludes any party or the Department from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the Department and to the other parties, the hearing may be continued upon the request of any party or the Department for sufficient time to allow the party or the Department to obtain and review the evidence.
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> * * *

The record shows that the ALJ did not abuse their discretion in allowing the employer to resubmit the documents after the hearing under these circumstances. Accordingly, Exhibit 2 was properly admitted, and claimant was not prejudiced by its admission.

FINDINGS OF FACT: (1) Mlasko Insurance, LLC employed claimant as a financial advisor from July 2025 until November 3, 2025.

(2) The employer expected their financial advisors to log information about contacts or attempted contacts with clients or potential clients in the employer's computer system. Claimant did not fully understand this expectation until October 10, 2025, when it was further clarified, and he understood it thereafter.

(3) The employer also expected their financial advisors to generate sales leads and contact existing leads, utilize the leads to schedule client meetings, and make sales at those meetings. While the employer believed that claimant appeared "busy" throughout his employment, they were dissatisfied with several aspects of his performance, including the quality of his administrative work and his having few client meetings and sales. Exhibit 2 at 6.

(4) The employer expected their financial advisors to generally work during standard business hours, use accrued leave if absent during those hours, and to timely notify the owner of absences. Claimant generally understood these expectations. However, claimant believed he had been granted some flexibility in his work hours, both because he was not paid by the hour, and because the employer's owner authorized him to work on some information technology (IT) issues late at night.

(5) On September 24, 2025, during business hours, claimant left work for approximately two hours to conduct personal business at the Department of Motor Vehicles (DMV).[1] Claimant did not seek permission from the owner to leave work because the owner was on vacation, and claimant did not believe that she would object. Claimant did not attempt to use accrued leave for this absence because he intended to make up the time through late night work. The owner warned claimant on September 29, 2025 regarding this incident,

[1] The parties gave conflicting and no more than equally balanced accounts of how long this absence lasted. Transcript at 44, 54. Because the employer bears the burden of proof by a preponderance of the evidence, they have not met that burden, and the length of the absence was found in accordance with claimant's account.

(6) During October 2025, the owner requested that claimant assist her with several issues regarding her work computer. Claimant suggested that he be allowed to set up remote access to that computer from his home computer so that he could work on transferring files and installing software at night when the work computer was not in use. The owner agreed, and claimant set up the remote access. Claimant also had remote access to his own work computer, with the owner's authorization. Claimant did not use or attempt to use the remote access to the owner's computer for any purpose other than what had been agreed upon.

(7) On October 10, 2025, the owner sent claimant an email inquiring why there were no notes in their computer system regarding a prospective client the owner had directed claimant to contact in September 2025. Claimant responded that day that he thought he had called the client, but she did not answer, and he therefore did not note anything in the computer system. Claimant further wrote in his email response, "I am now entering [computer system] notes at the end of any interactions or work done on a client's accounts, even if they are just prospects. I will make sure to start adding phone calls even if I don't connect with the client as part of the process." Exhibit 1 at 14.

(8) Between October 10, 2025 and October 30, 2025, claimant contacted three potential clients and scheduled meetings with them for October 31, 2025. Claimant did not enter the names or contact information for these potential clients in the computer system, one of whom was a lead that that been provided to claimant by the owner.

(9) On Friday, October 31, 2025, at 3:36 a.m., claimant texted the owner and other employees that he would be absent from work that day due to illness, and that he would reschedule his appointments. The owner was displeased that claimant had awoken her by texting at that hour, and that he would be absent from work on a day he was scheduled to meet with potential clients.

(10) At 8:00 a.m. on October 31, 2025, the potential client that had been referred to claimant by the owner appeared at the office for his appointment with claimant. Claimant had gone to sleep after sending the text to the owner, and did not attempt to cancel the appointments. After assisting that client, the owner called claimant about cancelling the other two appointments and saw no information about the three potential clients in the computer system. Claimant thought he might have the contact information in notes on his work computer, and during the call attempted to remotely access that computer to look for the information. When attempting the remote access, claimant accidentally connected to the owner's work computer, but immediately realized the error and changed the connection to his own work computer. The owner noticed the brief activity on her work computer and believed that claimant had accessed her computer without authorization. The owner told claimant that she would cancel the remaining appointments herself and ended the call.

(11) On Monday, November 3, 2025, the employer discharged claimant. In an email explaining the reasons for his discharge, the owner cited his work quality and failure to generate leads, client meetings, and sales; being absent from work due to illness on several occasions without accrued leave to cover the absence; modifying his schedule to work outside of standard business hours and spending too much of that time on IT issues rather than his primary responsibilities; having awoken the owner and other employees with his 3:36 a.m. text on October 31, 2025; having been absent from work on a day (October 31, 2025) he had client meetings scheduled; having failed to timely cancel those meetings; having failed to enter information regarding those potential clients into the employer's computer system

when he contacted them; and having remotely accessed the owner's work computer on October 31, 2025. Exhibit 2 at 6-7. Claimant did not work as an employee for the employer thereafter, though he was invited to remain affiliated with the employer as an independent contractor.

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). 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).

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 for several reasons, including longstanding concerns about performance and attendance, and several incidents that occurred or were discovered by the employer on October 31, 2025. The initial focus of the discharge analysis is on the proximate cause of the discharge, which is generally the last incident of misconduct before the discharge. *See, e.g., Appeals Board Decision* 12-AB-0434, March 16, 2012; *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). While the ongoing performance and attendance issues factored into the employer's decision to discharge claimant, the events of October 31, 2025, rather than those two issues, were the proximate causes of claimant's discharge, and are therefore the primary focus of the discharge analysis.

Moreover, the performance issues—which largely amounted to claimant failing to generate revenue for the employer, despite consistently appearing "busy" in the employer's view, and claimant putting forth his best efforts, per his testimony—would, more likely than not, fall within the "mere inefficiency" exception to misconduct set forth in OAR 471-030-0038(3)(b).[2] Exhibit 2 at 6; Transcript at 53.

[2] The record suggests that claimant had worked as a financial advisor, or similar, for ten years prior to working for the employer, but that he lacked skill or experience in generating his own leads and converting leads into sales. *See* Exhibit 2 at 6; Transcript at 53,

Likewise, much of claimant's absenteeism, which the employer came to view as excessive, was not shown by the employer to be for reasons other than illness, and the absenteeism would therefore largely fall within the "absences due to illness" exception to misconduct set forth in OAR 471-030-0038(3)(b).[3]

Regarding the events of October 31, 2025, which were the proximate causes of claimant's discharge, claimant texted the owner and other employees at 3:36 a.m. that he would be absent from work due to illness; missed three scheduled appointments that day with potential clients without having notified the clients they were cancelled; impeded the owner's ability to contact the affected clients by having failed to enter their information into the employer's computer system when setting the appointments; and having momentarily accessed the owner's work computer from his home.

The employer's attendance policy required employees to give notice of their absence, but did not provide more specific requirements. While the timing of claimant's text notice was perhaps ill-advised, it did not violate an employer policy of which claimant knew or should have known, and therefore was not a willful or wantonly negligent violation of an employer expectation. Furthermore, the employer did not rebut claimant's assertion that his absence that day was due to illness, and, as previously discussed, such absences are not misconduct under the rule,

Regarding claimant briefly accessing the owner's computer that day, the parties provided conflicting evidence about the employer's expectations. The owner asserted in the email discharging claimant that she "did not authorize the installation of any remote access software and [she considered] this a serious privacy breach." Exhibit 2 at 7. The owner provided more nuanced testimony at hearing, stating, "[Claimant] went into my computer and set up a remote access so that he had remote access to my computer. While he was working on technical. . . issues with the computer. . . he was allowed to have access to my computer to help with technology. But not to remote into my computer to be able to look at all of my material." Transcript at 5-6.

In contrast, claimant testified that in the "10 days or so" prior to October 31, 2025, the owner had requested that he work on IT issues involving her computer and that he "mentioned to her during office hours in her office that [he] was going to be able to install. . . a program that would allow [him] to remote in… [s]o that [he] can sit there and initiate the very large downloads that took hours at a time to complete[,] and she said 'okay.'" Transcript at 28. Claimant also provided as evidence email exchanges between himself and the owner, dating from October 22, 2025, which suggested the owner was aware that claimant was remotely accessing her computer. *See* Exhibit 1 at 6-10. In particular, an October 27, 2025 email sent by claimant to the owner and others stated, in part, "My last step is to import that data into [an account belonging to the owner], which I will have to do after hours when she won't need her computer for a couple of hours. I am going to try to complete that tonight, but it may have to be tomorrow night." Exhibit 1 at 7.

In weighing this conflicting evidence, it is more likely than not that the owner authorized claimant to remotely access her computer, but only for the limited purpose of resolving specific IT issues, and the facts have been found accordingly. The owner testified that on October 31, 2025, when speaking with

[3] Claimant's September 24, 2025 absence to transact business at the DMV would not fall within that exception. However, that incident was not a proximate cause of claimant's discharge, and as explained in detail below, the employer met their burden of showing that claimant was discharged for misconduct that was not an isolated instance of poor judgment, even without consideration of the incident. For those reasons, that incident is not analyzed further in this decision.

claimant by telephone about cancelling his appointments, her computer's mouse cursor started moving on its own, the screen momentarily "went black," and claimant told the owner that "it was him" causing that to happen. Transcript at 15. From these circumstances, the owner believed claimant was "remotely trying to log into [her] computer to be able to try to find the information about the clients that he had scheduled that day." Transcript at 13. Claimant did not rebut the owner's testimony regarding her observations, but testified that he had intended to remotely access his own work computer, "accident[ally]" pressed a button to access the owner's computer instead, and "immediately backed out of that and closed the software out" when he realized the mistake. Transcript at 33. In weighing these conflicting accounts, the employer has not shown by a preponderance of the evidence that claimant remotely accessing her computer on this occasion, rather than his work computer, was the result of more than ordinary negligence. As such, this was not a willful or wantonly negligent violation of the employer's expectation.

Regarding claimant's failure to enter in the employer's computer system information about the three prospective clients he had been scheduled to meet with on October 31, 2025, claimant asserted at hearing that he did not fully understand this expectation. Claimant testified:

> [I]t was hard to get a clear instruction on some of those aspects of. . . knowing when to put [information] in. What items are supposed to be put in at each step along the way with them being prospective clients. Because I. . . didn't put in every time I called somebody and talked to them or try to schedule an appointment. . . [I]n the case of these clients coming in if they hadn't turned in anything as far as a client goes I. . . didn't know that we were supposed to be putting that in. . . because then it would just be. . . an extra client on the database that would not have anything connected to it within the business. And it would just continue to build, you know, clutter on that.

Transcript at 35. Claimant testified that he instead kept contact information for prospective clients written on a notepad in his office. Transcript at 35. However, in an October 10, 2025 email submitted by claimant as evidence, he wrote to the owner: "I am now entering [computer system] notes at the end of any interactions or work done on a client's accounts, even if they are just prospects. I will make sure to start adding phone calls even if I don't connect with the client as part of the process." Exhibit 1 at 14. In weighing this conflicting evidence, it is more likely than not that as of October 10, 2025, claimant understood that the employer expected him to enter information about contacting prospective clients in the employer's computer system immediately after those contacts or attempted contacts, and the facts have been found accordingly.

In considering the pressure claimant was under in October 2025 to demonstrate his productivity to the employer by holding client meetings, it is reasonable to infer that once a client agreed to a meeting claimant would schedule it to occur as quickly as possible, and in any event, no more than 20 days in advance. Therefore, each October 31, 2025 appointment was, more likely than not, scheduled by claimant after he sent the October 10, 2025 email. Therefore, in each of these three instances, claimant contacted a prospective client to schedule an appointment and failed to immediately thereafter enter their information in the computer system, while knowing that failing to do so would likely violate the employer's expectation. Accordingly, regarding these three prospective clients, the employer has shown by a preponderance of the evidence that, with wanton negligence, claimant violated the employer's

reasonable expectation that he immediately enter their information in the computer system after contacting them.

Claimant's decision not to immediately enter the information in the computer system was, in each instance, likely an exercise of poor judgment. is actions did not exceed mere poor judgment because they did not violate the law and were not tantamount to unlawful conduct; the conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position; and it did not make a continued employment relationship impossible. Nonetheless, claimant's actions were not a single or isolated instance of willful or wantonly negligent conduct, as contemplated by the rule. Claimant violated the employer's expectation regarding entering information in the computer system on three occasions with three prospective clients, and his actions therefore constituted a repeated act or pattern of wantonly negligent conduct. Therefore, claimant's actions were not "isolated" within the meaning of the rule, and cannot be excused as an isolated instance of poor judgment. Accordingly, the employer discharged claimant for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving benefits effective November 2, 2025,

DECISION: Order No. 26-UI-321792 is affirmed.

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

DATE of Service: May 4, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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