EO: Intrastate
BYE: 23-Jan-2027

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

624
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0285

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits from January 25, 2026 through January 23, 2027 (decision # L0015904213). Claimant filed a timely request for hearing. On March 11, 2026, ALJ Christon conducted a hearing, and on March 16, 2026 issued Order No. 26-UI-323777, modifying decision # L0015904213 by concluding that claimant was discharged for misconduct and was therefore disqualified from receiving benefits effective January 25, 2026 and until requalified under Department law. On March 21, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that he provided a copy of his March 21, 2026 argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019), and EAB therefore did not consider that argument in reaching this decision. Claimant's April 15, 2026 argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2). EAB considered any parts of claimant's April 15, 2026 argument that were based on the hearing record.

FINDINGS OF FACT: (1) PacificSource, a health insurance carrier, employed claimant from September 2023 through January 27, 2026. Claimant primarily worked from home, but occasionally worked in the employer's office in Bend, Oregon.

(2) The employer expected their salaried employees, including claimant, to generally work from 8:00 a.m. to 5:00 p.m., Monday through Friday. This expectation was included in a handbook provided to claimant when he was hired. The employer only required or permitted salaried employees to use accrued paid time off (PTO) in four-hour increments. For example, if a salaried employee worked six hours in a

day, they were not required or able to use PTO to cover their two-hour absence, and would receive their usual salary for the week.

(3) From his discussions with management regarding these policies, claimant believed that the employer did not disapprove of salaried employees occasionally working more than four but less than eight hours in a day if their work was completed, without the use of PTO, particularly during the holiday season in November and December. The employer's written policies did not provide guidance on when it was appropriate for salaried employees to be absent from work for less than four hours in a day.

(4) On December 2, 2025, the employer began an investigation into claimant, his supervisor, and several other salaried employees in his department regarding an anonymous allegation of "time theft." Transcript at 16. The employer believed that the results of the investigation showed that on six days from November 1, 2025 through December 30, 2025, claimant had worked less than eight hours without using PTO, including working less than four hours each day on December 12, 15, and 30, 2025. During each workday in November and December 2025 for which claimant did not use PTO, he worked more than four hours.

(5) On January 27, 2026, the employer discharged claimant based on their belief that on six days in November and December 2025, he had worked less than eight hours without using PTO. The employer discharged four other salaried employees in claimant's Department at the same time for the same or similar reasons, including claimant's supervisor.

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 based on their belief that on six days in November and December 2025, he had worked less than eight hours without using PTO. The employer expected their salaried employees, including claimant, to generally work from 8:00 a.m. to 5:00 p.m., Monday through Friday, and this expectation was made known to claimant, in writing, when he was hired. The employer allowed salaried employees to accrue and use PTO, but only in four-hour increments, and claimant generally understood this policy. The order under review concluded that claimant knew or should have known that the combined effect of these policies was to prohibit salaried employees from working more than four but less than eight hours in a workday, and that claimant violated this expectation with wanton negligence by, on six occasions in November and December 2025, working less than eight hours without using PTO. Order No. 26-UI-323777 At 4-5. The record does not support these conclusions, in

part because the two policies, when viewed together, created ambiguity as to what the employer expected of salaried employees; and because the employer failed to show by a preponderance of the evidence that on any occasion claimant worked fewer hours than what he reasonably understood the policies to require.

At hearing, the employer's witness testified regarding the two policies:

> [O]ur PTO policy. . . for exempt employees. . . does indicate that PTO is to be entered in full or half-day increments. . . [S]o it, you know, if somebody does work a six-hour day they're not required to supplement the two hours of PTO. . .[S]o that's the PTO policy. But in contrast our Employee Handbook does talk about work schedules being Monday through Friday 40 hours. . . per week, which is eight hours per day. . . so that's the standard. That's very clear in our handbook. . .[S]o that's the only thing I can potentially believe that might be the case [regarding why claimant believed it was acceptable to occasionally work between four and eight hours in a day without using PTO]. Is just that they don't have to enter PTO if they work less than, you know, between four and eight hours. They don't have to enter PTO, but that is not what our policy says about a standard work schedule.

Transcript at 39. This testimony appears to acknowledge the difficulty in reconciling the two policies. In the example provided of an employee working six hours in a day and not being required to use any PTO to account for the remaining two hours, the witness seemed to suggest that the employee would nonetheless run afoul of the policy requiring eight hours of work per day. It is unclear from the record under what circumstances such an employee would face discipline, including discharge, for failing to work eight hours despite being unable, under the other policy, to use PTO to cover the partial-day absence.

Claimant testified regarding his understanding of the combined effect of these two policies:

> Usually. . . around holiday time just over the years that I worked there there would just kind of be a conversation like that with the managers[:] 'Hey, it's. . . holiday time. We're a little bit slower. Just get your work done. Get your four hours in so you could get your salary. And then. . . go ahead and enjoy the rest of the time with your family around the holidays.'

Transcript at 29. Claimant further explained that while this issue was primarily discussed with his supervisors around the holidays, his understanding of the policy year-round was that the employer expected salaried employees to work long enough to get their work done regardless of whether "it took longer [than] eight hours a day [or] if it took less than eight hours a day. . . but it was always a minimum of four hours." Transcript at 31. In rebuttal, the employer's witness testified that she asked claimant's most recent supervisor if "there [was] any reason why [the supervisor] would believe that [claimant or the other employees under investigation] would be working less than the standard eight hours per day," and that the supervisor answered in the negative, stating that "[t]here was no special agreement for reduced work schedules or anything like that." Transcript at 38.

However, claimant never asserted that he had requested formal modification of his schedule, and the supervisor's response to the witness's inquiry did not directly address what the supervisor had said or implied to her subordinates about whether the employer's policies ever allowed a salaried employee to work a day of more than four but less than eight hours. That the supervisor and three subordinates were discharged at the same time as claimant for similar reasons suggests that claimant's asserted understanding of the combined effect of the eight-hour workday and four-hour-increment PTO use policies was shared by others in his department, including his supervisor.

In considering the terms of the employer's policies and the parties' explanations regarding their respective understandings of how they functioned, the employer has not shown by a preponderance of the evidence that claimant knew or should have known that the combined effect of the policies was to prohibit him from occasionally working more than four but less than eight hours in a workday. Therefore, for the employer to meet their burden of showing that claimant violated the policies with at least wanton negligence, the record must, at a minimum, show that claimant worked four hours or less in a workday for which he did not use PTO.

The employer asserted that claimant worked less than eight hours without using PTO on six days in November and December 2025. The employer specified December 12, 15, and 30, 2025 as the three most recent of the six days, and asserted that claimant had worked three hours and two minutes, two hours and 38 minutes, and "less than four hours," respectively, on those dates. Transcript at 5-6, 8-9. The record does not reveal the earliest three of the six dates, or the lengths of time the employer believed claimant had worked during those dates. The employer's witness testified that the employer based their belief regarding how long claimant "actively work[ed]" during a particular day on the times he logged into and out of his work computer at the start and end of the day and "deduct[ing]. . . long gaps in between." Transcript at 35-36. The witness testified that the employer also "review[ed]" claimant's calendar and "email activity" in making the determinations. Transcript at 36. The employer did not provide documentary evidence at hearing regarding claimant's computer activity, calendar, or emails, and had not disclosed to claimant prior to the hearing the six dates on which they believed he had worked less than eight hours without using PTO.

In rebuttal, claimant testified that he did not clearly recall his activities on the three dates identified by the employer at hearing, but that "as far as [he was] aware [he] worked. . . the required time for those days," and that he was "always very diligent about getting in [his] minimum four hours a day for [his] salary because. . . that's the minimum." Transcript at 20-21. Claimant also testified that there were times when he would "step away from [the] computer" or was "not wiggling [his] mouse to show that [he was] on the computer," but was still engaged in work activities such as "impromptu meetings" that would not be reflected in the employer's calculations of active work time. Transcript at 20, 33-34. Claimant likewise recalled having been in an all-day meeting in the Bend office, which he believed occurred on either December 11 or 12, 2025, and suggested that this could have accounted for a lack of computer activity on one of those dates.[1] Transcript at 42.

In weighing these conflicting accounts, evidence regarding whether claimant worked four or fewer hours without using PTO on any day in November or December 2025 is, at most, equally balanced.[2] As such,

[1] Claimant initially testified that he believed the meeting occurred on December 15, 2025, but after hearing rebuttal evidence from the employer, seemed to concede that it had not occurred on that date. *See* Transcript at 42.

the employer has not met their burden of showing by a preponderance of the evidence that claimant willfully or with wanton negligence violated their expectations regarding the length of workdays or PTO use. Accordingly, the employer has not shown that claimant was discharged for misconduct.

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

DECISION: Order No. 26-UI-323777 is set aside, as outlined above.

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

DATE of Service: May 6, 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.

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.

[2] The order under review stated that there was no "reason to disbelieve any of the witnesses who testified." Order No. 26-UI-323777 at 4. Nonetheless, the order found facts in accordance with the employer's account because it was based, in part, on computerized records, while claimant's testimony was viewed as "somewhat contradictory," and his recollection of some information, such as the date on which the all-day meeting in Bend occurred, was imprecise. Order No. 26-UI-323777 at 4. To the extent this constituted an "explicit credibility determination," EAB declines to follow the determination, as the employer's assertions regarding how long claimant worked on any given day failed to account for work performed without active computer use, and claimant's unequivocal testimony that he recalled working at least four hours each day in November and December 2025 in which he did not use PTO was sufficient to rebut the employer's assertions. *See* OAR 657.275(2) ("When there is evidence in the record both to make more probable and less probable the existence of any basic fact or inference, [EAB] need not explain its decision to believe or rely on such evidence unless the administrative law judge has made an explicit credibility determination regarding the source of such facts or evidence. The board is not required to give any weight to implied credibility findings.")

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
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*