EO: Intrastate
BYE: 03-Oct-2026

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

169
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0287

Reversed & Remanded

PROCEDURAL HISTORY: On November 6, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the work separation (decision # L0013950116). The employer filed a timely request for hearing. On March 10, 2026, ALJ Franco conducted a hearing, and on March 19, 2026, issued Order No. 26-UI-324368, reversing decision # L0013950116 by concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective October 5, 2025. On March 23, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) Interlink Health Services, Inc., employed claimant as an account manager from September 30, 2024 until October 7, 2025.

(2) The employer expected employees to work scheduled shifts and to do so in-office when required. When an employee anticipated being absent, the employer expected them to send an email to the employer's human resources office before their scheduled start time, copying the employee's direct supervisor, stating the date, their name and that of their direct supervisor, and advising that they would be absent on that date.[1]

[1] At hearing, the witnesses' accounts of the employer's absence notification procedure differed. The employer's controller testified that claimant was required to schedule an absence ahead of time with her direct supervisor, if possible, and otherwise send an email to all managers advising of the absence generally, along with a separate follow up email to her direct supervisor with "any specifics" of the absence. Transcript at 7-8. Claimant testified that the procedure merely required her to email human resources, with her direct supervisor copied, before her scheduled start time, noting the date, her name and that of her direct supervisor, and that she would be absent on that date. Transcript at 14-15. As these accounts are in equipoise and the employer has the burden of proof, the record as developed supports claimant's account of the policy. This fact is therefore found in accordance with claimant's account for purposes of this decision, although it is subject to change following remand as additional record development is pending.

(3) At some point before September 6, 2025, possibly on or around May 2025, claimant went on maternity leave. In or around August or early September 2025, claimant's leave ended.

(4) Claimant had previously sustained a back injury from an accident, for which she received chiropractic treatment. Upon her return from maternity leave, claimant's doctor provided claimant a note limiting her work schedule to 30 hours per week due to the injury.

(5) When claimant returned from leave, the employer assigned her a schedule that was partially remote beginning with one day in the office, with the in-office days to increase gradually until claimant was working in the office every day she was assigned to work. At that time, claimant informed the employer that childcare limitations conflicted with her ability to work in-office days. Rather than work the in-office days, claimant proposed working part-time hours or from home. Specifically, at some point after returning from leave, claimant asked her direct supervisor if she could work from home. The supervisor told claimant that she had asked the employer's human resources department and they had denied the request. Claimant was also told that part-time hours were not an option.

(6) Thereafter, the employer gained the impression that when claimant was assigned to work an in-office day, she would call out of work, presumably using her paid time off to cover the absence.

(7) On September 6, 2025, claimant had an email exchange with her supervisor. In claimant's response portion of this exchange, she referenced agreeing with the employer to a particular work schedule, the specifics of which were not stated. Claimant also mentioned her shortened work hours due to her back condition, and alluded to either having a desire to make a request for unpaid time off or having recently made such a request that the employer denied. Claimant concluded the email by noting concern about what she perceived as the employer failing to "uphold a family-friendly culture" and giving her "pushback" when she made "reasonable requests that carry little to no operational impact." Transcript at 11.

(8) During the week of Sunday, September 28 through Saturday, October 4, 2025, claimant was scheduled to be in the office on Tuesday, September 30, 2025 and Thursday, October 2, 2025, with a 7:00 a.m. start time for both days.

(9) On September 30, 2025, claimant sent an email to human resources, with her direct supervisor copied, more than an hour before her 7:00 a.m. start time, advising that she was going to be out that day. The employer's controller believed that claimant was required to send a separate follow up email to her direct supervisor with "any specifics" of the September 30, 2025 absence, and that claimant had failed to do so. Transcript at 8.

(10) On October 2, 2025, claimant sent an email to human resources, with her direct supervisor copied, more than an hour before her 7:00 a.m. start time, advising that she was going to be out that day. The employer's controller believed that claimant was required to send a separate follow up email to her direct supervisor with "any specifics" of the October 2, 2025 absence, and that claimant had failed to do so. Transcript at 8.

(11) Claimant was absent on September 30 and October 2, 2025 because she "did not have proper care for [her] son." Transcript at 15. Claimant "had somebody who could come and be with [her son], but [she] couldn't leave him alone as he was too young to be left alone." Transcript at 17.

(12) On October 7, 2025, claimant arrived in-office for work and was pulled into a meeting. The employer's controller and vice president of client engagement then met with claimant, gave her her final paycheck, and informed her that the employer was discharging her effective that day.

CONCLUSIONS AND REASONS: Order No. 26-UI-324368 is set aside, and this matter remanded for further proceedings consistent with this order.

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 order under review concluded that the claimant's absences on September 30, 2025 and October 2, 2025 were the proximate cause of her discharge and that the absences constituted misconduct. Order No. 26-UI-324368 at 4-5. The record as developed does not support these conclusions. Among other things, remand is necessary to clarify whether claimant was discharged because of the September 30, 2025 and October 2, 2025 absences themselves, or for a different reason, such as potentially refusing to abide by the employer's in-office schedule or alleged failure to follow the employer's call-out procedures.

First, on remand, the ALJ should make inquiries to better develop certain key facts. Specifically, the ALJ should ask questions to develop precisely when claimant's maternity leave began and when it ended. The ALJ should inquire what claimant's work schedule was, both prior to and after taking leave, including: how many total hours per week claimant worked; whether the employer complied with the doctor's note limiting claimant to 30 hours of work per week because of her back injury, and, if so, when the limitation to 30 hours began; how many days per week claimant was assigned to work in the office versus working from home before she went on leave; how many days per week she was assigned to work in the office versus working from home after she returned from leave; when, specifically, the employer phased in working in-office days following claimant's return from leave; when this was increased from one day to two days or more; and whether and when claimant called out from work on other such in-office days, or worked some of them, and whether she used paid time off to cover any such call-outs. The ALJ should also inquire about when claimant made each of her requests to work remotely or work a part-time schedule, to whom she directed each such request, and what the employer's response to each such request was, and if the response was a denial, what reason, if any, was given for each denial. The ALJ should further develop the record as to whether the employer informed claimant the

reason why she was being discharged on October 7, 2025, and if so what they informed claimant and if not, why not.

Next, to help assess whether claimant generally refused to abide by the in-office schedule, may have otherwise been insubordinate regarding returning to the office, and whether she was discharged for those reasons, the ALJ should ask claimant to clarify whether she intended to work in the office at all, whether she had agreed to return to in office work twice a week, whether her call-outs on in-office days were driven by a desire to have a remote work schedule and the conveniences that that might bring, or rather, whether the call-outs and desire for a remote work schedule were necessitated by a lack of childcare. To this end, the ALJ should inquire as to what efforts, if any, claimant made to obtain childcare, and what happened, if anything, to the childcare claimant had to enable herself to work in-person. The record should also be further developed as to when claimant learned she did not have childcare available for September 30 and October 2, 2025 and what actions she then took (such as trying to find alternative childcare).

Specifically, the ALJ should ask questions to develop the record as to what efforts claimant made to find childcare, and what childcare options were available to her, such as daycare, a babysitter, or assistance from family members or friends. As claimant was in the office on October 7, 2025, the day of her discharge, it can be inferred that she had sufficient childcare in place on that day. The ALJ should inquire what those arrangements were and whether similar arrangements could have been made for September 30 and October 2, 2025. Further, claimant should be asked to elaborate on her testimony that on September 30 and October 2, 2025, she "had somebody who could come and be with [her son], but [she] couldn't leave him alone as he was too young to be left alone." Transcript at 17. The ALJ should inquire whether this testimony meant that claimant had someone lined up to watch her son on September 30 and October 2, 2025 but decided the child was too young to be left with someone else babysitting, whether claimant had lined up someone to care for the child on those dates but the person canceled, or if claimant meant something else.

As to whether claimant was discharged for allegedly failing to follow the employer's call-out procedures, the witnesses' accounts of the employer's absence notification procedures differed. The employer's controller testified that claimant was required to schedule an absence ahead of time with her direct supervisor, if possible, and otherwise send an email to all managers advising of the absence generally, as well as a separate follow up email to her direct supervisor with "any specifics," which the controller alleged claimant had failed to send. Transcript at 8. The controller testified these policies were contained in the employee handbook, which claimant acknowledged receiving. Transcript at 9. On the other hand, claimant testified that she was provided the handbook and policy but stated that the procedure merely required her to email human resources, with her direct supervisor copied, before her scheduled start time, noting the date, her name and that of her direct supervisor, and that she would be absent on that date. Transcript at 14-15. Claimant testified that she followed this procedure on September 30 and October 2, 2025. Transcript at 15.

To help assess whether claimant was discharged for allegedly failing to follow the employer's call-out procedures on September 30 and October 2, 2025, the ALJ should ask the employer's witness whether the alleged failure to follow the procedures, rather than the absences themselves, were why they discharged claimant. The ALJ should inquire what the "specifics" about the absences were that claimant was required to send to her direct supervisor to comply with the policy. The ALJ should also ask

whether the emails claimant sent before her absences on September 30 and October 2, 2025, to human resources, with her direct supervisor copied, were sufficient to comply with the call-out procedures, and if not, why not.

Finally, to help assess whether claimant was discharged for the September 30 and October 2, 2025 absences themselves, and whether those absences constituted misconduct, further inquiry is necessary. The existing record suggests the absences themselves were the proximate cause of the discharge given the employer's controller's testimony at hearing that the employer discharged claimant on October 7, 2025 because claimant had "missed the two days that she was supposed to be in the office that week." Transcript at 7. However, the ALJ should make inquiries to clarify whether the absences, rather than an alleged failure to follow call-out procedures or abide by the employer's in-office schedule, were the reasons for the discharge.

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-324368 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-324368 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: May 8, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-324368 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.

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