

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0301**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct connected with work and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0014657534). The employer filed a timely request for hearing. On March 6, 2026, ALJ Micheletti conducted a hearing, and on March 12, 2026, issued Order No. 26-UI-323526, affirming decision # L0014657534. On March 27, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Lowe's Home Centers, LLC employed claimant as a cashier at one of their stores from October 13, 2022 until October 31, 2025.

(2) In the mid-1990's, claimant had a stroke. Thereafter, claimant suffered from persistent seizures, depression, and anxiety.

(3) In March 2025, claimant's seizures, depression, and anxiety worsened, and, throughout that year, claimant's conditions caused him to be frequently absent from work. Claimant informed the managers at the employer's store of his seizures and other conditions and of the fact that the conditions were causing him difficulties at work. One of the managers suggested that claimant pursue taking leave under the Family and Medical Leave Act (FMLA). However, due to not having a medical provider at the time, and then being unable to navigate the online application process due to computer illiteracy, claimant did not seek to take a leave via FMLA.

(4) In September 2025, claimant obtained a doctor who specialized in seizures. The doctor told claimant that his seizures might have been worsened by work-induced stress.

(5) Claimant's conditions caused him to be absent from work from October 23 through October 30, 2025. Claimant did not call in to notify the employer that he would be absent on these dates because his depression was debilitating. The employer took note of the absences and had an employee go to claimant's residence to check on his wellness.

(6) On October 31, 2025, claimant went to the employer's store and spoke to several members of the store's upper management. Claimant stated that he needed some time off work because of his conditions and that his doctor had indicated that work-induced stress may have worsened his seizures. Claimant did not tell the managers that he was quitting work.

(7) The managers responded by stating "okay," and the meeting ended. Transcript at 26. A few days later, claimant learned that he was not on the work schedule, and called one of the managers and asked about his job status. The manager said that she would check and call claimant back but never did.

(8) The employer believed that on October 31, 2025, claimant had called the store and spoke to one of their assistant store managers and, during that phone call, stated that he was resigning that day because his doctor had advised him to do so. Misunderstanding claimant to have resigned, the employer ended claimant's employment that day.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but not for misconduct.

**Nature of the Work Separation.** A work separation occurs when a claimant or employer ends the employer-employee relationship.

If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, the witnesses offered conflicting accounts of claimant's work separation. The employer's witness, one of the employer's assistant managers, testified that claimant quit working for the employer on October 31, 2025, when claimant spoke with one of the employer's other assistant managers over the phone, and was believed to have stated to that manager that he was resigning that day because his doctor advised him to do so. Transcript at 5-7. The witness testified that his knowledge of the contents of that conversation were based on what he heard from the assistant manager. Transcript at 6-7.

In contrast, claimant testified that he did not speak by phone to that assistant manager on October 31, 2025. Transcript at 10, 23. Instead, claimant testified that on October 31, 2025, he went to the store<sup>1</sup> and

---

<sup>1</sup> The witnesses also gave conflicting testimony regarding claimant's visit to the store and meeting with the managers that day. As discussed, claimant testified that he met with management in person at that time, which he thought was October 31, 2025, and stated that he needed some time off work, but did not say that he was resigning. Transcript at 22-23, 26. The employer's witness stated that claimant's in-person visit, at which the witness was present, came a few days to a week after claimant allegedly resigned over the phone on October 31, 2025, and that during the visit claimant merely expressed gratitude that the employer had an employee do a wellness check while claimant had been absent without notice from October 23 through October 30, 2025. Transcript at 7, 33, 37. As these two accounts are in equipoise and the employer bears the burden of proof, the weight of the evidence favors claimant's account.

spoke to all of upper management, telling them that he “just needed a little bit of time” off because his doctor had indicated that his seizures might have been worsened by work-induced stress. Transcript at 22. Claimant further testified that he never said “I quit,” and that he had wanted to continue working for the employer. Transcript at 26. Claimant stated that the managers responded by simply saying “okay.” Transcript at 26. Claimant testified that a day or two later, he learned that he was not on the work schedule, and called one of the managers and asked about his job status. Transcript at 29-30, 39-40. The manager said she would check and call claimant back but never did. Transcript at 39-40. Claimant then concluded that the employer had discharged him. Transcript at 40-41.

The weight of the evidence favors claimant’s account of his separation from work because it is based on his firsthand experience, whereas the employer’s witness’s account is based on what he had heard from the other assistant manager. This decision’s findings have therefore been found in accordance with claimant’s account.

Thus, the preponderance of evidence shows that claimant was willing to continue working for the employer for an additional period of time on October 31, 2025, but the employer ended the employment relationship on that date when they misunderstood claimant to have resigned. The work separation was therefore a discharge that occurred on October 31, 2025.

**Discharge.** 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). “[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 record fails to show that the employer discharged claimant because he had engaged in a willful or wantonly negligent violation of the employer’s expectations or a disregard of their interests. The record suggests that the employer discharged claimant not for any alleged misconduct but simply because they misunderstood him to have stated that he was resigning because his doctor had advised him to do so (when, in fact, claimant had merely asked for some time off and mentioned that his doctor had indicated that his seizures might have been worsened by work-induced stress). Accordingly, the employer did not discharge claimant for misconduct connected with work under ORS 657.176(2)(a).

The employer therefore discharged claimant, but not for misconduct connected with work. Claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 26-UI-323526 is affirmed.

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

**DATE of Service: May 12, 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.

**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.



# 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 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](mailto:appealsboard@employ.oregon.gov)  
 Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.