

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0315

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 23, 2025, 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 effective November 16, 2025 (decision # L0014789145).¹ Claimant filed a timely request for hearing. On March 11, 2026, ALJ Murray conducted a hearing, and on March 12, 2026 issued Order No. 26-UI-323342, affirming decision # L0014789145. On March 31, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument referenced several documents that were not part of the hearing record and were not received with the argument or claimant's application for review. Even if EAB had received these documents, claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering them during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Sober Living Recovery Center, LLC employed claimant as a mental health quality and operations manager from April 21, 2025 through November 17, 2025.

(2) The employer expected their employees to report for work on time, and to notify their supervisor at least one hour in advance if they would be late. Claimant understood this expectation except for the specific amount of advance notice required.

¹ Decision # L0014789145 stated that claimant was denied benefits from November 16, 2025 to November 21, 2026. However, decision # L0014789145 should have stated that claimant was disqualified from receiving benefits beginning Sunday, November 16, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(3) The employer had a policy prohibiting romantic relationships among certain employees, including those in a “supervisory position” or with “influence to make [employment-related] decisions.” Transcript at 7. The employer also expected employees affected by the policy to disclose “feelings” that could lead to such relationships. Transcript at 7-8.

(4) Claimant was late for work on several occasions throughout his employment. Claimant generally notified his supervisor that he was going to be late, but not always an hour or more in advance of his shift. The last instance of tardiness occurred on November 4, 2025.

(5) Claimant’s supervisor attempted to discipline claimant for being late to work on several occasions. However, the employer’s human resources (HR) manager refused to authorize any discipline, except for a written warning regarding the November 4, 2025 tardiness, which was issued on or around November 10, 2025. The employer suspected that the HR manager was giving claimant preferential treatment due to the existence of a romantic relationship. In August 2025, the HR manager denied the existence of such a relationship when questioned by the employer, and claimant was never questioned about it.

(6) On November 12, 2025, a former employee reported to the employer that “it seemed like [claimant and the HR manager] were pretty familiar with each other when seen outside of the workplace” and that they “appear[ed] to be in a romantic relationship.” Transcript at 5, 7. The employer conducted an investigation that yielded reports from other employees of what they perceived as the HR manager giving claimant preferential treatment.

(7) On Friday, November 14, 2025, the employer decided to discharge claimant based on their belief that he was in a romantic relationship with the HR manager and had received preferential treatment because of it. On Monday, November 17, 2025, claimant was notified of the discharge and did not work for the employer thereafter.

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 because they believed he was in a romantic relationship with the HR manager and had received preferential treatment from her as a result. The employer’s witness asserted that they would have discharged claimant on November 17, 2025 for his tardiness, even if the employer had not received information about the purported romantic relationship on November 12, 2025. Transcript at 6. However, the record shows that claimant was last tardy on November 4, 2025, and that

the employer issued a written warning as discipline for that incident. As there were no alleged instances of tardiness after November 4, 2025, it is more likely than not that this instance of tardiness was not the proximate cause of claimant's discharge. Therefore, the employer's belief that claimant had been in a romantic relationship with the HR manager and received preferential treatment because of it was the proximate cause of his discharge, and is the initial focus of the discharge analysis. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *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).

The order under review concluded that claimant engaged in a romantic relationship with the HR manager and received preferential treatment as a result, which constituted misconduct. Order No. 26-UI-323342 at 4. The record does not support this conclusion.

The employer expected that some of their employees, including those in a "supervisory position" or with "influence to make [employment-related] decisions," would not engage in romantic relationships with other employees, and that employees affected by the policy would disclose to the employer "feelings" that could lead to such relationships. Transcript at 7-8. A written copy of that policy was not offered as evidence at hearing, and the employer's witness could not locate the policy in the employee handbook during her testimony, and she therefore gave the above summary of her understanding of its terms. Transcript at 7. Claimant's testimony regarding his familiarity with the policy was unclear. *See* Transcript at 17-18. It is unnecessary to determine the extent to which claimant should have known of the policy because the employer did not meet their burden to show by a preponderance of the evidence that claimant engaged in a romantic relationship with the HR manager.

The employer's current HR manager, who did not work for the employer at the time of claimant's discharge and did not have first-hand knowledge of the events leading to it, was the employer's only witness at hearing. The witness testified that on November 12, 2025, a former employee who did not wish to be identified reported that "it seemed like [claimant and the HR manager] were pretty familiar with each other when seen outside of the workplace" and that they "appear[ed] to be in a romantic relationship." Transcript at 5, 7. The witness further testified that this report prompted a brief investigation in which "many staff provided their written statements. A lot of it was specific concerns that were seen throughout staff meetings[,] and grievances not being taken seriously [or] taking significantly longer to close when [claimant] was involved." Transcript at 8-9. The witness stated that the HR manager had "prevented and often challenged" attempts by claimant's supervisor to discipline claimant for his frequent tardiness, which was viewed by the employer as further evidence of preferential treatment. Transcript at 5. The employer considered the accounts of claimant appearing to receive preferential treatment to be "enough evidence that the claim [of a romantic relationship] was substantiated essentially[.]" Transcript at 9. The witness also testified that in August 2025 the HR manager denied the existence of a romantic relationship with claimant, and that claimant was never questioned as to the existence of a relationship. Transcript at 8.

In contrast, claimant denied in his testimony having had a "romantic relationship with another employee," and when asked about the HR manager specifically, testified that he had "tried to be friendly with everyone at the workplace. . . [but] didn't hang out with anyone outside the workplace." Transcript at 15. When asked if he had an explanation for the former employee's November 12, 2025 report,

claimant testified that he believed it was based on an incident that occurred in approximately late October 2025, when claimant attended a public event alone and unexpectedly encountered the HR manager and another employee there. Transcript at 17. Claimant was asked at hearing if there was “any interaction there that could have been perceived as romantic,” and claimant testified, “Not that I’m aware of.” Transcript at 17.

In weighing these accounts, claimant’s first-hand testimony regarding the non-existence of a romantic relationship with the HR manager is entitled to greater weight than the employer’s account, which was based on hearsay and speculation, and the facts have therefore been found in accordance with claimant’s account. As such, the employer has not shown by a preponderance of the evidence that claimant was engaged in a romantic relationship with the HR manager, or failed to disclose such a relationship, in violation of the employer’s expectations.

Regarding the employer’s assertion that claimant received preferential treatment from the HR manager, such as being spared discipline when he was tardy, the employer has not shown that this involved any willful or wantonly negligent action, or failure to act, on claimant’s part. As such, even if the allegation of preferential treatment were true, only the HR manager would have been responsible for violating any employer expectation associated with such treatment. Accordingly, the employer has not met their burden to show by a preponderance of the evidence that claimant engaged in the alleged conduct constituting the proximate cause of his discharge, and therefore failed to show he 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-323342 is set aside, as outlined above.

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

DATE of Service: May 14, 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.

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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

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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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