

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0316

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 5, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective September 21, 2025 (decision # L0013956936).¹ Claimant filed a timely request for hearing. On March 11, 2026, ALJ Goodrich conducted a hearing, and on March 19, 2026 issued Order No. 26-UI-324272, affirming decision # L0013956936. On March 31, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lower Umpqua Hospital employed claimant as a patient account representative from November 7, 2022 through September 24, 2025.

(2) As a patient account representative, claimant worked in the business office of the employer's medical campus. Claimant's duties primarily consisted of speaking with patients on the phone. However, claimant's duties also included covering for the employer's patient financial counselor (PFC) when the latter was on break or otherwise unavailable. Located in the PFC's office was a till which held a small sum of cash, from which change could be made for patients who paid their bills in cash.

(3) The employer's handbook contained a written policy which stated, in relevant part, "Misconduct that may result in immediate discharge without warning may include but is not limited to... [t]heft of property belonging to a patient, visitor, employee, or [the employer]." Exhibit 1 at 3. At the time of hire, the employer provided "all employees [with] the location of all of [their] policies," and considered it an employee's "responsibility to... know what they are and to read them." Transcript at 13. Claimant was generally aware of the availability of the employer's policies but did not read them.

¹ Decision # L0013956936 stated that claimant was denied benefits from September 21, 2025 to September 19, 2026. However, decision # L0013956936 should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 21, 2025 and until she earned four times her weekly benefit amount. See ORS 657.176.

(4) Prior to working for the employer, claimant had worked for a school district. The school district's office in which claimant worked contained a petty cash drawer similar to the till in the PFC's office. The school district permitted employees to borrow money from the petty cash drawer, and did not consider doing so to be theft.

(5) On Friday, September 19, 2025, claimant was covering for the PFC while the latter was at lunch. During that time, claimant's own lunch, which she had ordered earlier, was delivered. However, when claimant went to pay the delivery person, she realized that she had forgotten her wallet at home. As such, claimant took \$10 from the till to pay for her lunch. Based on her previous experiences with the school district, claimant believed that this would be permitted, and did not believe it to be theft. When she took the money from the till, claimant intended to go home during her break later in the day, retrieve her wallet, and pay back the \$10 to the till. During claimant's next break, claimant became distracted by an offer to take a walk during break with coworkers, and forgot to go home to retrieve her wallet.

(6) Later on September 19, 2025, the PFC was reconciling the till when she noticed the \$10 shortage. When the PFC returned to work on the following Monday, September 22, 2025, she recounted the till and again found that it came up \$10 short. The PFC asked claimant if she knew anything about the shortage. Claimant initially said that she did not, as she had forgotten that she had borrowed the \$10 from the till. A moment later, however, claimant remembered what she had done, and asked the PFC if the sum missing was two \$5 bills. The PFC confirmed that it was. In response, claimant told the PFC that she had borrowed the money and had forgotten to pay it back. Claimant then retrieved \$10 from her wallet and returned it to the till.

(7) The employer subsequently learned about the September 19, 2025 incident and placed claimant on administrative leave, pending investigation into the matter. On September 24, 2025, the employer discharged claimant because they felt that her having borrowed the money from the till constituted a violation of their theft policy.

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).

Isolated instances of poor judgment, good faith errors, unavoidable accidents, 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).

The employer discharged claimant because they felt that her having borrowed the money from the till on September 19, 2025 was a violation of their theft policy. The order under review concluded that this constituted misconduct, reasoning that claimant's conduct met the legal definition of "theft" under ORS 164.015(1); and that claimant "knew or should have known that her conduct would probably result in a violation of the standards of behavior which the employer had the right to expect." Order No. 26-UI-324272 at 4–5. The record does not support this conclusion.

First, it should be noted that the relevant provision of the employer's policy did not define the term "theft," and requires only that employees not engage in it. Likewise, the record lacks evidence to show that the employer maintained any policy specifically relating to the use of the till in the PFC's office, including whether employees were permitted to temporarily borrow money from it. Thus, as the order under review reasoned, it is appropriate to read the employer's policy to define "theft" as it is defined under Oregon law. ORS 164.015 states, in relevant part:

A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof[.]

* * *

Because the above statutory definition requires an intent to deprive another of property or to appropriate their property, the record must show that claimant had such an intent.² The record does not so show.

If an individual believes in good faith that they are permitted to borrow the property of another, it does not follow logically that they intend to deprive the owner of that property or appropriate the property to themselves, even if the borrower's belief is mistaken, because the intent to *return* the property is inherent in the act of borrowing.

Here, claimant believed, even if mistakenly, that the employer would permit her to temporarily borrow money from the till for personal reasons. This belief was apparently formed based on claimant's experiences with her previous employer, who permitted such use from their petty cash box. This, combined with the lack of a clear definition of "theft" in the employer's policies and the lack of any policies or other guidance specifically relating to the till in the PFC's office, shows that claimant's mistaken belief was also reasonable. Thus, claimant had a reasonable but mistaken belief that the employer would permit her to temporarily borrow money from the till for personal purposes. Claimant therefore lacked the requisite intent necessary for her conduct to be considered theft, such that she would have violated either the employer's theft policy or the statutory definition of theft.

Even if claimant's conduct did not violate the employer's written policy, it can be reasonably inferred that the employer maintained an unwritten expectation regarding the use of the till. The record fails to show, however, that the employer ever conveyed these expectations to claimant, either in writing or verbally. Because the record does not show that the employer ever communicated these expectations to claimant, the employer has not met their burden to show that claimant either knew or had reason to

² See generally *Smithee v. Employment Dep't.*, 228 Or. App. 346, 355, 208 P.3d 965 (2009).

know that her conduct would violate those expectations. As such, claimant did not violate those expectations willfully or with wanton negligence. Instead, because claimant had a good faith but mistaken belief that she was permitted to borrow money from the till, her conduct was a good faith error, which is not misconduct.

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

DECISION: Order No. 26-UI-324272 is set aside, as outlined above.

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

DATE of Service: May 15, 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

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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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