

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0328

Reversed
Disqualification

PROCEDURAL HISTORY: On March 5, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct connected with work and claimant therefore was disqualified from receiving unemployment insurance benefits effective January 25, 2026 (decision # L0016346869).¹ Claimant filed a timely request for hearing. On March 25, 2026, ALJ Wahl conducted a hearing, and on April 1, 2026, issued Order No. 26-UI-325767, reversing decision # L0016346869 by concluding that claimant was discharged, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the work separation. On April 6, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer and claimant each submitted written arguments. EAB considered the parties' arguments in reaching this decision.

FINDINGS OF FACT: (1) The Oregon Travel Information Council employed claimant as a rest area specialist from August 14, 2024 until January 28, 2026. The employer was a semi-independent state agency that managed highway rest areas around the state. Claimant lived in Redmond, Oregon, and worked in an agency unit overseeing rest areas in central Oregon.

(2) The employer had a vehicle use policy that prohibited employees from using agency vehicles for personal use and prohibited unauthorized passengers in agency vehicles. The employer also expected employees to be honest in their interactions with the employer, including refraining from lying to the employer about their purpose for using agency vehicles and refraining from filing worker's compensation claim forms that falsely assert injury in the scope of employment. Claimant knew and understood these expectations as they were included in the employer's employee handbook and he had acknowledged receipt of the handbook upon hire. Claimant had also attended vehicle use and ethics

¹ Decision # L0016346869 stated that claimant was denied benefits from January 25, 2026 to January 23, 2027. However, decision # L0016346869 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 25, 2026 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

training for government employees during his employment, which covered the vehicle use policy and the employer expectation of honesty.

(3) On January 11, 2026, claimant used one of the employer's agency trucks for personal purposes to drive from his residence to Bend, Oregon, to pick up a mattress and deliver it to family members in Bend. Claimant had his wife as a passenger in the truck, without authorization from the employer.

(4) During claimant's January 11, 2026 use of the agency truck, claimant was involved in a crash with another vehicle. The employer's truck was totaled and claimant sustained injuries. Shortly after the accident, claimant called his supervisor and told him what had occurred. The supervisor told claimant that, to protect himself, claimant should falsely state to the employer that use of the truck had been work-related and to not disclose that claimant had a passenger with him at the time.

(5) On January 12, 2026, during an investigation conducted by the employer, claimant falsely told the employer's human resources (HR) manager that he had no passengers on January 11, 2026 and was driving the truck for the agency business purpose of picking up materials from a hardware store for use on a work project at a rest area. Also, on that day, claimant filed a worker's compensation claim form, falsely asserting that he had been injured during the vehicle accident in the course and scope of his employment, when, in fact, claimant's injuries had been sustained while running a personal errand.

(6) Thereafter, the employer's HR manager continued investigating the matter and claimant eventually admitted to her that he had used the agency truck on January 11, 2026 for a personal errand and that his wife was an unauthorized passenger. Claimant also later withdrew the worker's compensation claim form that falsely asserted that he had been injured during the vehicle accident in the course and scope of his employment.

(7) Claimant believed that unauthorized use of agency vehicles for personal errands was not an uncommon occurrence among employees working in his unit. However, in claimant's communications with the HR manager in which he eventually admitted to using the truck for a personal errand, claimant stated that, had he not gotten into the accident, he would not have disclosed that he had used the truck for personal purposes with his wife as an unauthorized passenger because making that disclosure "would have gotten him into trouble[.]" Transcript at 19.

(8) On January 28, 2026, the employer discharged claimant for using the agency truck for personal purposes, having his wife as an unauthorized passenger in the vehicle, lying to the employer that there was an agency business purpose for driving the truck, and filing a worker's compensation claim form that falsely stated that he had been injured during the January 11, 2026 vehicle accident in the course and scope of his employment.

(9) Prior to discharging claimant, the employer had not disciplined claimant for violations of any workplace policies or expectations.

CONCLUSIONS AND REASONS: The employer discharged claimant 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 are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, acts that violate the law, that are tantamount to unlawful conduct, or that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

The order under review concluded that claimant was discharged, but not for misconduct. Order No. 26-UI-325767 at 3-4. The order concluded that claimant’s dishonesty was not a willful or wantonly negligent violation of the employer’s expectations, and that claimant’s personal use of the agency vehicle was a wantonly negligent violation, but was not misconduct because it was an isolated instance of poor judgment. Order No. 26-UI-325767 at 3-4. The record does not support these conclusions.

The employer discharged claimant for using the agency vehicle for personal purposes, having his wife as an unauthorized passenger in the vehicle, lying to the employer that there was an agency business purpose for driving the truck, and filing a worker’s compensation claim form that falsely stated that he had been injured during the January 11, 2026 vehicle accident in the course and scope of his employment. The record shows that, as to each of these reasons for the discharge, claimant violated the employer’s expectations with wanton negligence. The record also shows that claimant’s conduct was an irreparable breach of trust and so exceeded mere poor judgment and therefore cannot be excused as an isolated instance of poor judgment.

Claimant’s use of the agency truck to run the personal errand and inclusion of his wife as a passenger without the employer’s authorization violated the employer’s policy prohibiting employees from using agency vehicles for personal use and prohibiting unauthorized passengers in agency vehicles. Claimant consciously violated these expectations with indifference to the consequences of his actions. Claimant also knew or should have known that using the truck for a personal errand with his wife as an unauthorized passenger would probably result in a violation of the employer’s expectations. Claimant asserted at hearing that unauthorized use of agency vehicles for personal errands was not an uncommon occurrence among employees working in his unit. Transcript at 20. However, the fact that claimant concealed that he was using the truck for personal purposes with his wife as an unauthorized passenger and would not have disclosed those facts but for the accident, because doing so “would have gotten him into trouble” shows that claimant knew or should have known that his conduct violated the employer’s expectations. Transcript at 19. Thus, claimant’s use of the agency truck to run the personal errand and

inclusion of his wife as a passenger without the employer's authorization were wantonly negligent violations of the employer's expectations.

Likewise, the fact that claimant lied to the employer on January 12, 2026, by falsely stating that he had no passengers on January 11, 2026 and was driving the truck for an agency business purpose, violated the employer's expectation that employees be honest in their interactions with the employer. Claimant's filing of a worker's compensation claim form that falsely stated that he had been injured during the vehicle accident in the course and scope of his employment also violated the employer's expectation that claimant be honest. Claimant made these falsehoods consciously, and with indifference to the consequences of his actions.

In making the falsehoods, claimant also knew or should have known that violations of the employer's expectations would probably result. That claimant's supervisor had told claimant to falsely state to the employer that the use of the truck was for an agency business purpose and to not disclose the presence of claimant's wife did not absolve claimant of the binding employer expectation that he not lie about the nature of his use of agency vehicles or whether he had an unauthorized passenger. Given that being forthright and honest is a matter of common sense, was an employer expectation included in the employee handbook claimant received, and was covered by the vehicle use and ethics training for government employees claimant attended during his employment, claimant was aware that lying to the employer about the nature of his use of the truck was prohibited and that he was to refrain from making false assertions on worker's compensation claim forms. Thus, claimant's lying to the employer that there was an agency business purpose for driving the truck, and filing a worker's compensation claim form in which he falsely stated that he had been injured during the January 11, 2026 vehicle accident in the course and scope of his employment, were wantonly negligent violations of the employer's expectations.

Claimant's wantonly negligent violations were not an isolated instance of poor judgment because they exceeded mere poor judgment. This is the case because claimant's conduct involved lying to the employer about the nature of using the truck and lying on a worker's compensation form, and so represented an irreparable breach of trust. Acts that create an irreparable breach of trust do not fall within the exculpatory provisions of OAR 471-030-0038(3). Accordingly, claimant's wantonly negligent violation cannot be excused as an isolated instance of poor judgment.

For these reasons, the employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits effective January 25, 2026.

DECISION: Order No. 26-UI-325767 is set aside, as outlined above.

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

DATE of Service: May 15, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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.

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

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