

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0329

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 17, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0014186071). The employer filed a timely request for hearing. On March 12, 2026, ALJ Honea conducted a hearing, and on March 20, 2026 issued Order No. 26-UI-324583, affirming decision # L0014186071. On April 6, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dave’s Killer Bread, Inc. employed claimant as a production operator from December 12, 2024 through August 29, 2025.

(2) The employer had written policies that prohibited “[t]hreatening the safety of another employee, fighting or provoking a fight, or intentional conduct which could cause physical or mental harm to another employee. . . [or] [u]sing company equipment for purposes other than those intended.” Transcript at 8. Claimant acknowledged in writing receiving a copy of these policies in January 2025.

(3) On August 23, 2025, claimant was at his workstation using a hose with a sprayer attachment to clean bowls. A coworker approached claimant, but claimant had earplugs in and initially did not hear what, if anything, the coworker said. Claimant removed the earplugs while the coworker remained approximately ten feet away. At that point, the coworker became “aggressive towards” claimant, “menacing and threatening” him as he approached and saying that he was “going to beat [claimant] up.” Transcript at 17-18. Claimant raised his hands in the air and used the hose he was holding to spray the coworker once “in self-defense.” Transcript at 17. At some point, the coworker spit in claimant’s face, and claimant used the hose to wash out his own eyes. A supervisor intervened and told the coworker to leave, and claimant to resume working. Claimant did not touch or attempt to touch the coworker during the incident.

(4) The employer thereafter investigated the incident, including reviewing surveillance footage. The employer believed that the footage depicted claimant, without provocation, spraying the coworker with the hose twice before the coworker approached claimant, then claimant shoving the coworker in the chest and displaying closed fists, claimant wiping off his own face, then spraying the coworker a third time as the coworker was walking away. The employer considered claimant to have provoked the incident and, in doing so, to have violated their policies.

(5) On August 29, 2025, the employer discharged claimant for his role in the August 23, 2025 incident.

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 based on their belief that on August 23, 2025, he provoked a fight with a coworker during which claimant repeatedly sprayed the coworker with a hose. The employer prohibited their employees from “[t]hreatening the safety of another employee, fighting or provoking a fight, or intentional conduct which could cause physical or mental harm to another employee. . . [or] [u]sing company equipment for purposes other than those intended,” and claimant understood these policies. Transcript at 8. The parties gave differing accounts of the incident.

The employer’s witness testified to the following regarding what the employer believed was depicted in video of the incident¹:

[Claimant] was cleaning a bowl in the dish pit area in the makeup department on the production floor. He was using a . . . hose and a sprayer attachment. . . [Claimant] looks up at another employee and moves the sprayer out of the bowl and points the sprayer at the employee and sprays them with water. . . [Claimant] then sprayed the [water] back into the bowl. [Claimant] then moved the sprayer from the bowl again and sprayed the employee again. The employee approaches [claimant] and [claimant] places his hands out touching the employee’s chest and shoving the employee away from him. Claimant then places his hands toward his chest and his hands clenched in fists. [Claimant] then opens his hands where his palms are out facing the employee. [Claimant] wipes his face with his left hand and then. . . extends his arm at what looks to be like a push or a strike at the

¹ It is unclear from the record whether the witness watched the video herself, as her testimony describing the video appeared to be based on a written report. See Transcript at 7-8, 10. The video is not in evidence.

other employee. [Claimant] then grabs the hose sprayer and points the sprayer at the employee while the employee is walking away and sprayed the employee with water again.

Transcript at 7-8. The witness further testified that while she did not speak with claimant regarding the incident, her assistant did, and according to the assistant, claimant “admitted that he sprayed the other employee. . . [and] said that he didn’t get along with the other employee.” Transcript at 10-11. The witness also denied that claimant said he had been provoked by the other employee. Transcript at 12.

In contrast, claimant testified that he was at his workstation using a hose with a sprayer attachment to clean bowls when a coworker approached him, but claimant had earplugs in and initially did not hear what, if anything, the coworker said. Transcript at 21. Claimant removed the earplugs, and while the coworker remained approximately ten feet away, the coworker became “aggressive towards” claimant, “menacing and threatening” him as he approached and saying that he was “going to beat [claimant] up.” Transcript at 17-18. Claimant raised his hands in the air and used the hose he was holding to spray the coworker once “in self-defense.” Transcript at 17. At some point, the coworker spit in claimant’s face and claimant used the hose to wash out his own eyes. Transcript at 18. A supervisor intervened and told the coworker to leave, and claimant to resume working. Transcript at 19. Claimant denied touching or attempting to touch the coworker during the incident. Transcript at 18.

In weighing these two accounts, even if the testimony of the employer’s witness was based on her personal review of the video, rather than relaying a hearsay account of someone else who reviewed the video, the employer’s account would be no more than equally balanced with claimant’s. As the employer bears the burden of proof by a preponderance of the evidence, and has not met that burden, the facts have been found in accordance with claimant’s account.

The employer reasonably expected that their employees would not fight or provoke a fight at work, or misuse business equipment. Claimant’s actions in spraying the coworker a single time, as he advanced toward claimant while threatening claimant and spitting in claimant’s face, were undertaken with the purpose of avoiding an assault or fight by momentarily delaying and distracting the coworker while attracting the attention of a nearby supervisor to intervene. Under these circumstances, claimant’s actions did not constitute a willful or wantonly negligent violation of the employer’s policies, as he acted reflexively to defend himself, rather than with conscious deliberation and disregard for the consequences of his actions or of the employer’s interests. Accordingly, the employer has not shown that they discharged claimant 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-324583 is affirmed.

S. Serres and D. Hettle;
A. Steger-Bentz, 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.

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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 desisyong ito.

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 محكمة 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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