

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0350

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 11, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits from January 11, 2026 to January 9, 2027 (decision # L0015949391). Claimant filed a timely request for hearing. On April 2, 2026, ALJ Contreras conducted a hearing, and on April 6, 2026 issued Order No. 26-UI-326191, modifying decision # L0015949391 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective January 4, 2026, and until requalified under law.¹ On April 14, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her April 14, 2026 argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Moreover, claimant's April 14 and 27, 2026 arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2). EAB considered any parts of claimant's April 27, 2026 argument that were based on the hearing record.

FINDINGS OF FACT: (1) Josephine County employed claimant as a transit operator from October 2023 through January 9, 2026.

(2) Claimant drove standard bus routes until late 2025. At that time, the employer conducted a bidding process wherein transit operators were allowed to select their roles in order of seniority. Due in part to limited options available by the time claimant's selection turn arrived, claimant chose a role as a Dial-A-

¹ Although Order No. 26-UI-326191 stated it affirmed decision # L0015949391, it modified that decision by changing the beginning date of the disqualification from January 11, 2026 to January 4, 2026, and by clarifying that the disqualification ends only through requalification rather than on a specific future date. Order No. 26-UI-326191 at 4.

Ride driver, which involved providing point-to-point transportation for customers with special needs. Claimant felt that with proper training, she would be capable of performing that role. Claimant was provided training from December 4 through 7, 2026.

(3) On December 8, 2025, the employer reviewed video footage from inside the vehicle at the beginning of claimant's shift and noticed that claimant had improperly positioned a passenger's shoulder restraint. Claimant was immediately advised of this, and believed she thereafter positioned the restraint correctly. Claimant was unaware of any other specific ways in which she may have been performing her duties incorrectly, but told the employer she thought she could benefit from additional training. The employer did not provide claimant with additional training.

(4) On December 9, 2025, claimant's supervisor told her that he had concerns about her performance in the new role, and that a trainer would be riding in her vehicle from December 10 through 12, 2025 to conduct an evaluation. The trainer did not provide any feedback to claimant during or after these days of observation.

(5) On December 15, 2025, claimant's supervisor told her that he felt she was incapable of continuing in the Dial-A-Ride role, without identifying any specific deficiencies in her work. As there were no standard bus routes or other full-time roles available, claimant was told that the employer intended to discharge her if you like a project level she did not quit work. Claimant was thereafter allowed to provide coverage for absent employees in standard bus route or customer service roles when those opportunities were available, but was otherwise required to use accrued leave to account for the balance of each workweek.

(6) On December 29, 2025, claimant's supervisor again told her that the employer intended to discharge her if she did not immediately quit work. Claimant requested that she be allowed to trade roles with a standard bus route driver who was amenable to such a trade, but the supervisor refused based on policies associated with the seniority bidding process. Claimant believed there were no alternatives to being discharged, and therefore submitted notice of her resignation, effective upon the exhaustion of her accrued paid leave balance on January 9, 2026. The employer agreed to the work separation on these terms, but would have discharged claimant on or before January 9, 2026 had she not submitted the resignation notice.

(7) On January 9, 2026, claimant stopped working for the employer as planned.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

Nature of the Work Separation. A work separation occurs when a claimant or employer severs 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).

The parties each characterized the work separation as a voluntarily leaving, due in part to claimant having submitted written notice of her resignation on December 29, 2025, and not working after January

9, 2026, in accordance with the effective date in the notice. However, whether the work separation was a discharge or a voluntary leaving is a legal conclusion, based on facts in the record, not on the parties' characterizations. *See Roadhouse v. Employment Dept.*, 283 Or App 859, 863, 391 P.3d 887, 890 (2017) ("The answer to the threshold question of whether an employee has voluntarily left work or been discharged is a legal conclusion that is based on factual findings.") (Internal quotation marks removed). The order under review concluded that claimant voluntarily quit work to avoid an "imminent and inevitable" discharge that would not have been for misconduct. Order No. 26-UI-326191 at 4. However, the record does not support that the work separation was a voluntary leaving.

Claimant transitioned from driving a standard bus route to being a Dial-A-Ride driver beginning on December 4, 2025. On December 15, 2025, claimant's supervisor told her that the employer intended to discharge her based on perceived poor performance in the new role, and thereafter allowed her only to substitute for absent employees in standard bus route driver and customer service roles when such work was available, and to use accrued leave for the balance of each workweek. On December 29, 2025, the supervisor again reiterated to claimant that she would be discharged if she did not immediately resign.² To the extent the employer's records did not document the supervisor's ultimatums to claimant, and that the witness at hearing was unaware of the ultimatums, claimant's first-hand testimony regarding the conversations with her supervisor is entitled to greater weight than the employer's evidence on that issue, and the facts have been found in accordance with claimant's accounts.

In response to these ultimatums, claimant gave written notice of her resignation on December 29, 2025, stating that it would become effective upon the exhaustion of her accrued leave balance on January 9, 2026, which the employer accepted. Claimant had first proposed that she instead trade roles with an employee assigned to a standard bus route, with the consent of that employee, but the employer refused. Under these circumstances, it is reasonable to infer that on December 29, 2025, prior to claimant submitting notice of her resignation, claimant was willing to continue the employment relationship on and after January 9, 2026, but that the employer was unwilling at that time to allow her to work after January 9, 2026. Accordingly, the work separation was a discharge that occurred on January 9, 2026.

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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

² The employer's witness at hearing, who did not have first-hand knowledge of the conversations between claimant and her supervisor, testified that she was "not aware of" claimant having been issued an ultimatum regarding her continued employment at any time, and that, to the witness's knowledge, claimant had never been told she would be discharged if she did not resign. Transcript at 8, 42. However, the witness testified in the affirmative when asked if claimant's employment was "in jeopardy" had she not given notice of her resignation when she did. Transcript at 8.

The employer discharged claimant because they were dissatisfied with her performance as a Dial-A-Ride driver. Claimant began training for this position on December 4, 2025, after having driven a standard bus route for more than two years. On December 8, 2025, after completion of the training, claimant was notified that she had incorrectly positioned a shoulder restraint on a passenger early in her shift that day, and claimant believed that she positioned the restraint on passengers correctly thereafter. A trainer rode along with claimant and evaluated her performance from December 10 through 12, 2025, but did not provide any feedback to claimant. On December 15, 2025, claimant's supervisor told her that she was going to be discharged because he believed her incapable of performing adequately in the Dial-A-Ride driver role, without providing any specific examples of what she had done wrong or how she could have improved her performance. Claimant was thereafter limited to providing coverage for other employees on standard bus routes or at a customer service window, and using accrued leave when there were no absences for which coverage was needed. Claimant separated from employment after exhausting her remaining accrued leave.

The employer did not identify at hearing any specific policy or expectation that they considered claimant to have violated, and asserted that claimant was not suspected of any "misconduct" during her employment. Transcript at 12-13. To the extent that claimant failed to meet the employer's performance expectations in the Dial-A-Ride driver role, it was, more likely than not, attributable to inefficiency resulting from lack of job skills or experience in the new role, which is not misconduct pursuant to OAR 471-030-0038(3)(b). As the employer has not met their burden of showing that claimant was discharged for a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, her discharge was not for misconduct.

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

DECISION: Order No. 26-UI-326191 is set aside, as outlined above.

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

DATE of Service: May 26, 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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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 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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