EO: Intrastate
BYE: 03-Oct-2026

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

363
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0359

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 29, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0013691411). The employer filed a timely request for hearing. On April 10, 2026, ALJ Naylor conducted a hearing and issued Order No. 26-UI-326812, reversing decision # L0013691411 by concluding that claimant was discharged for misconduct, and disqualified from receiving benefits effective October 12, 2025. On April 15, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on April 15 and 28, 2026. Claimant did not state that she provided copies of her arguments to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Both arguments also 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).

Additionally, claimant asserted in her April 28, 2026 argument that the hearing proceedings were unfair or the ALJ was biased. Claimant's April 28, 2026 Written Argument at 3. EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) Allstate Insurance Company employed claimant in their quality-assurance department from September 18, 2017 through October 13, 2025.

Level 3 - Restricted

(2) The employer maintained an anti-harassment policy which prohibited employees from engaging in harassing behavior against other employees, including via social media. Claimant was most recently trained on this policy on September 12, 2025, and understood it.

(3) On or around September 13, 2025, claimant began a leave of absence relating to mental-health conditions and was scheduled to return to work on October 13, 2025.

(4) On October 1, 2025, the employer notified claimant and several other members of her department that they were to be laid off effective November 30, 2025, and that while they would continue to receive pay and benefits through that date, they were not required to perform any more work for the employer. Claimant was frustrated by this, particularly because she felt that her supervisors had unfairly passed her over for a promotion, and that she would not have been laid off if she had received the promotion.

(5) On October 5, 2025, claimant sent one of her supervisors, the manager of the quality assurance department, two text messages, each containing a Facebook video. One video stated, "You are the fucking problem; you are the fucking problem." Exhibit 1 at 1. The other video stated, "I can say whatever the fuck I want to you now." Exhibit 1 at 1. On October 6, 2025, claimant sent the manager an Instagram direct message which stated, "U should feel guilty for all the ppl u have financially injured w your favoritism." Exhibit 1 at 1. Claimant sent these messages to the manager because she was "frustrated and overwhelmed" with various personal difficulties in her life, including her own mental health issues and her mother's recent dementia diagnosis, and because she felt that the manager had engaged in favoritism and harassment against her. Audio Record at 21:55. Additionally, claimant did not believe that the employer's policies still applied to her at that point because of the layoff notice.

(6) The manager did not respond to claimant's messages but reported them to the employer's human resources (HR) department. When a member of the HR department interviewed claimant about the matter, claimant denied having sent the messages, instead speculating that either her boyfriend or niece might have sent them on claimant's behalf. Claimant made these false assertions because she realized that she had made a mistake and was concerned about the repercussions of having violated the employer's anti-harassment policy.

(7) On October 13, 2025, the employer discharged claimant because they felt that her conduct on October 5 and 6, 2025 violated their anti-harassment policy. Claimant had no prior history of policy violations.

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 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 employer discharged claimant due to her conduct on October 5 and 6, 2025. On those dates, claimant sent her manager three messages, two of which included videos using profanity, and one of which accused the manager of causing claimant "financial injury." The order under review concluded that this constituted misconduct because it was at least a wantonly negligent violation of the employer's expectations, and was not an isolated instance of poor judgment because it was not isolated. Order No. 26-UI-326812 at 4. While the record shows that claimant's conduct was at least a wantonly negligent violation of the employer's expectations, it nevertheless shows that claimant's conduct was an isolated instance of poor judgment.

The employer's policy prohibited employees from engaging in harassment against others, including via social media, although it does not show what type of behavior in particular the policy considered "harassment." However, claimant had been trained on and understood the policy and admitted at hearing that she initially lied to the employer about having sent the messages because she had realized that she had made a mistake in doing so and feared repercussions. Audio Record at 24:30. Thus, the totality of the evidence shows that claimant most likely knew that sending those messages to her manager would violate the employer's policy, and she therefore violated it with at least wanton negligence.

Despite the fact that claimant sent three separate messages to her manager, however, those three messages were all part of a single occurrence, rather than three separate occurrences. In *Perez v. Employment Dept*., 164 Or. App. 356, 992 P.2d 460 (1999), for example, the Court of Appeals found that a claimant's multiple violations of the employer's expectations over two days was a single occurrence when considered within the context of a 13-year employment relationship. The Court also considered a claimant's three separate abusive answering machine messages to his supervisor during one evening, about a single subject matter, to be a single occurrence in the employment relationship. *Waters v. Employment Division*, 125 Or. App. 61, 865 P2.d 368 (1993). Likewise, arguing with a supervisor for 15 to 20 minutes, despite the supervisor's instruction to "shut up," was also deemed a single occurrence in the employment relationship. *Goodwin v. Employment Division*, 35 Or. App. 299, 581 P.2d 115 (1978).

Here, claimant had worked for the employer for nearly a decade and had no history of policy violations prior to October 5, 2025. The messages that claimant sent were in relatively close succession, prompted by the same general frustrations, and relating to the same topic. Thus, the three messages were, per the cases cited above, all part of one single occurrence. Because claimant's wantonly negligent conduct consisted of one occurrence, and she had no prior history of other willful or wantonly negligent violations, claimant's conduct was isolated.

Further, claimant's conduct did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible, as it was not likely to reoccur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty.

In sum, while claimant's conduct was a willful or wantonly negligent violation of the employer's expectations, it was an isolated instance of poor judgment, and not misconduct. Claimant therefore was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 26-UI-326812 is set aside, as outlined above.

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

DATE of Service: May 27, 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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