

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0369

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 30, 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 effective December 14, 2025 (decision # L0015799714).¹ Claimant filed a timely request for hearing. On March 24, 2026, ALJ Andersen conducted a hearing, and on March 30, 2026 issued Order No. 26-UI-325404, reversing decision # L0015799714 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the quit. On April 18, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision. Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) AquamarineSeaside, LLC employed claimant as their executive chef at their restaurant from May 7, 2025 through December 19, 2025.

(2) During claimant's employment the business was owned by "A" and her son. A's husband, "D," was considered "the patriarch" of the family business but did not have a direct ownership interest in it and did not participate in its management. Transcript at 22. D occasionally worked in the kitchen to prepare a few specific dishes on his own.

¹ Decision # L0015799714 stated that claimant was denied benefits from December 14, 2025 to December 19, 2026. However, decision # L0015799714 should have stated that claimant was disqualified from receiving benefits beginning December 14, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

(3) Around midnight on December 17, 2025, the restaurant experienced a weather-related electricity outage that lasted approximately seven to eight hours. Claimant reported for work at approximately 7:00 a.m. and began testing the temperature of perishable items, discarding those that had a temperature deemed unsafe under state food handling guidelines. While communicating with A by text about the effects of the outage that morning, A told claimant that a new sous chef had been hired and would be starting work in the near future. This upset claimant to some degree, as the business had recently laid off sous chefs and claimant thought it would be more prudent to rehire one of them than to hire a new employee.

(4) At approximately 11:00 a.m., D came into the kitchen and began going through the discarded perishables in the trash, upset at the financial loss to the business. D began “yelling at” claimant, calling him “an idiot,” using “a lot of expletives,” and telling claimant that he “didn’t know what [he] was doing.” Transcript at 12-13. Claimant thereafter engaged in an argument with D about discarding the food in which claimant also used foul language.² Eventually, D told claimant to “get the [fuck] out of the kitchen”; in response, claimant asked, “[W]hat’s going on?” and D repeated, “[G]et the [fuck] out.” Transcript at 14. Claimant asked, “[A]re you firing me?” and D replied, “[Y]es. Get out.” Transcript at 14. Claimant gathered his knives and left the restaurant. Claimant viewed D’s behavior on this occasion as consistent with “a history of [D] kind of losing his temper.” Transcript at 13-14.

(5) Minutes after leaving, claimant called A’s son and told him that D had discharged him, and the son said he would talk to D about the matter. Claimant also texted A, “Now you need another [chef]. [D] fired me.” Transcript at 27-28. A wrote back, “What? How. . . did that happen? and claimant replied, “He was cussing at me for throwing out bad product. He told me to get out. I asked him if I was fired and he said yes.” Transcript at 28. A did not reply. Thirty-eight minutes later, claimant texted, “Let me know when I can retrieve my personal belongings. I’ll add up my receipts for the purchases I have made and give them to you.” Transcript at 28. Claimant and A did not exchange any further texts. Shortly before noon, A’s daughter-in-law, who handled human resources matters for the business, tried to call claimant but he did not answer, and she did not leave a message. The employer made no other attempts to contact claimant because they believed, based on experience, that claimant would show up for his next shift “like nothing [had] happened.” Transcript at 30. The employer kept the restaurant closed that day due to not having a chef present. The following day, claimant did not appear for his scheduled shift or contact the employer.

(6) On December 19, 2025, claimant emailed A and her son, writing in relevant part, “I need you to state the reason for my termination as it is somewhat unclear. This is so there are no questions when I file for unemployment. [Also,] I still have not received my final paycheck. I was terminated by [D] at approximately 11:00 on Wednesday, December 17th. My receipts for purchases of \$300.00 need to be paid to me via check or Zelle. After payment is received I will drop off the receipts to you.” Transcript at 28-29. A replied:

You initiated a heated conversation by asking questions about a future hire. This resulted in an argument where cuss words were used. And consequently you directed the

² The employer asserted that the argument concerned claimant’s displeasure with the decision to hire a new sous chef, either instead of or in addition to the issue of the discarded food. However, claimant testified that he did not discuss the new hire with D, only with A. Transcript at 20. As claimant’s testimony was the only first-hand account of the argument in the record, this fact has been found in accordance with claimant’s account.

conversation towards a non-owner or person of direct authority asking if you are being fired. Walking out and retrieving your knives. You did not meet or show any desire to meet or discuss the circumstances of the. . . disagreement and walk out.

We're the owners and people of authority for such decisions and matters. In response to the final paycheck please know that we are waiting for our QuickBooks payroll specialist to reconfigure the appropriate [tax withholding]. . . to determine the actual amount. And by Monday [this] will result in the correct final paycheck amount.

Transcript at 31-32. Claimant did not work for the employer thereafter.

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

Nature of the Work Separation. A work separation occurs when a claimant or employer ends 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 disputed the nature of the work separation. The employer asserted that claimant quit work by walking out of his December 17, 2025 shift and failing to report for work thereafter, while claimant asserted that he stopped working because a member of the owners' family told him he was discharged, and a co-owner appeared to confirm that he had been discharged in a December 19, 2025 email.

Claimant asserted that on December 17, 2025, he was at work disposing of perishable items that had become unsafe to consume due to lack of refrigeration during the electricity outage. D entered the kitchen, became upset that claimant had discarded the items, and began yelling at and insulting claimant using foul language. Claimant argued with D, also using foul language, until D told claimant to "get the [fuck] out of the kitchen." When claimant asked, "[A]re you firing me?" D replied, "[Y]es. Get out." Transcript at 14. Claimant gathered his knives and left, immediately telling both co-owners what had happened. Neither of the employer's witnesses at hearing were present for this incident, though one witness testified that she later reviewed video of the incident, without audio, and her description of what was depicted in the video was generally consistent with claimant's account. *See* Transcript at 45-46.

The record shows that, for approximately two days after having learned about the incident, neither co-owner told claimant that D lacked the authority to discharge him and that claimant remained in their employ. The employer asserted at hearing that claimant knew or should have known that D did not have the authority to discharge him. *See, e.g.*, Transcript at 49. However, the owners' failure to immediately repudiate the purported discharge when given the opportunity to do so reasonably led claimant to believe that they had endorsed it, even if D lacked actual authority to discharge him on his own. Claimant gave the owners an additional opportunity to repudiate the purported discharge with his December 19, 2025 email asking them to explain the reasons for his discharge. While the reply to that email implied that D did not have the authority to discharge him, it did not repudiate the discharge and instead listed the grounds on which they believed discharge was warranted. Under these circumstances, the owners communicated to claimant that they were unwilling to continue the employment relationship on and after December 19, 2025. By contrast, the record does not show that claimant was unwilling to

continue working for the employer. Thus, had the employer at any point between the incident with D and the owner's December 19, 2025 email expressed a willingness to allow him to do so, claimant more likely than not would have continued working for the employer. Accordingly, the work separation was a discharge that occurred on December 19, 2025.

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).

The employer discharged claimant because, according to their December 19, 2025 email to claimant, he "initiated a heated conversation by asking questions about a future hire. . . [that] resulted in an argument where cuss words were used," and because he "walk[ed] out" mid-shift after asking "a non-owner or person of direct authority" if he had been fired without trying to discuss the matter with an owner.

Regarding the circumstances of the argument, the weight of the evidence shows that the argument concerned claimant's disposal of spoiled food, and did not involve claimant's displeasure about the hiring of a new sous chef. Moreover, the record shows that D initiated that argument upon discovering the food in the trash; that he then used foul language toward claimant; and that claimant reciprocated in the use of such language. Claimant testified that D had similarly displayed a "short temper" on other occasions, which the employer did not rebut, suggesting that the employer had, to that point, tolerated the use of foul language in the kitchen. The record does not contain evidence of a specific employer policy prohibiting employees from using foul language in the context claimant did, or from participating in an argument initiated by another on a work-related matter. Therefore, the employer has not met their burden of showing that claimant knew or should have known that his actions during the argument likely violated the employer's expectations, such that his failure to meet those expectations was willful or wantonly negligent.

Regarding claimant having left the restaurant mid-shift, causing it to remain closed for the day, it is reasonable to infer claimant understood that the employer generally expected him to remain at work for the entirety of his shifts. Claimant decided to leave the restaurant only because D had told him that he had been discharged. Although claimant was mistaken about D's authority to discharge him, he did not rely solely on what D had said, and immediately reported the incident to both owners as he left. Neither owner told claimant in response that he had not actually been discharged, and they did not direct him to return to work that day. Given claimant's attempts to immediately clarify his employment status with the owners, which demonstrated that he was not indifferent to the consequences of his actions or of the employer's interests, his misunderstanding of whether the employer expected him to remain at work for the rest of his shift amounted to, at worst, ordinary negligence. Therefore, the employer has not met their burden of showing that claimant having left the restaurant mid-shift under these circumstances was a

willful or wantonly negligent violation of their expectations. Accordingly, the employer has not shown that claimant's discharge was for misconduct.

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

DECISION: Order No. 26-UI-325404 is affirmed.

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

DATE of Service: May 29, 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.surveymzmo.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 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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 Email: appealsboard@employ.oregon.gov
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