

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0395

Reversed & Remanded

PROCEDURAL HISTORY: On February 25, 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 unemployment insurance benefits effective January 4, 2026 through January 9, 2027 (decision # L0016259218). Claimant filed a timely request for hearing. On April 17, 2026, ALJ Krueger conducted a hearing, and on April 20, 2026 issued Order No. 26-UI-327557, modifying decision # L0016259218 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective January 4, 2026 and until requalified under Department law.¹ On April 27, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: 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 her 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.

The parties may offer new information, such as the new information in claimant's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to

¹ The order under review did not state the effective date of the disqualification. Order No. 26-UI-327557 at 4. However, as the order under review found that claimant separated from work on January 6, 2026, it is presumed that it intended to disqualify claimant from benefits effective January 4, 2026. Order No. 26-UI-327557 at 1.

provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Daryle G. Taylor, Inc. employed claimant as a server at their restaurant from February 2022 through January 6, 2026.

(2) On January 5, 2026, claimant was serving a customer whose check came to approximately \$78. The customer meant to leave claimant a \$100 bill for the check, intending the change from the bill to go to claimant as a tip. However, unbeknownst to the customer at the time, two additional \$100 bills were stuck to the bill the customer left for claimant. Claimant collected the \$300 in cash, assumed that the customer had left her an unusually large tip, and pocketed the change from the check.

(3) On the morning of January 6, 2026, the customer from the previous day called the employer and informed them that he had left the extra \$200 by mistake and requested that the sum be returned to him. The restaurant's floor manager subsequently told claimant that she would have to return the \$200. Claimant then spoke to the owner of the restaurant about the matter, who told claimant the same. Claimant stated that she did not have the money on her, but that it was at home, so the owner instructed her to go home, retrieve the \$200, and return to work. Claimant was scheduled to work until 1:00 p.m. that day.

(4) At approximately 9:00 a.m., claimant left work as instructed. However, on her way home, claimant became angry that the employer was requiring her to return the money and decided to learn what the law required in such circumstances. Claimant eventually determined that the matter should be between her and the customer, and that the employer should not have gotten involved. As such, claimant decided not to return the money to the employer, so she did not return to work that day. Claimant did not contact the employer to inform them that she would not be returning to her shift that day. However, claimant intended to return to work on January 8, 2026, her next scheduled workday, and at that point request the customer's contact information from the employer so she could return the money to him directly.

(5) Later on January 6, 2026, the manager came to believe that claimant had quit due to her failure to return to work. As such, the manager sent claimant a text message indicating that claimant's final paycheck would be available to her via direct deposit. Claimant did not work for the employer thereafter. However, claimant was willing to continue working for the employer. Claimant never told the employer that she was quitting, and the employer never told her that she was discharged.

CONCLUSIONS AND REASONS: Order No. 26-UI-327557 is set aside and this matter remanded for further development of the record.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If the 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 the 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, as claimant asserted that she had been discharged by way of the text message from the manager, while the employer asserted that claimant had quit when she failed to return to work on January 6, 2026. Transcript at 5, 7, 13. The order under review concluded that claimant quit, explaining that while neither party intended to end the employment relationship, claimant's failure to either return to work or contact the employer after she left on January 6, 2026 constituted "abandonment of her job." Order No. 26-UI-327557 at 3. The record does not support this conclusion.

Instead, the record shows that the employer discharged claimant. Despite being angry and unwilling to return the extra tip money directly to the employer, claimant was nevertheless willing to continue working for the employer and had intended to return to work two days later, when she was next scheduled. However, later on January 6, 2026, after claimant had failed to return to her shift as directed, the manager incorrectly concluded that claimant's failure to return was because claimant had quit, and sent her a text message indicating that claimant's final paycheck would be ready for her. In doing so, the manager severed the employment relationship, as a final paycheck is unequivocal proof that an employment relationship no longer exists between the parties.² As such, the employer discharged claimant on January 6, 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).

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).

As explained above, the employer discharged claimant when they incorrectly assumed that she had quit by failing to return to work as directed on January 6, 2026. Because the employer severed the employment relationship based on a misinterpretation of what claimant's failure to return to work that day meant, it stands to reason that this separation would not have occurred if claimant had either returned to work that day (with or without the \$200) or communicated her intentions to the employer.

² See also *Van Rijn v. Employment Dep't.*, 237 Or App 39, 238 P3d 419 (2010) (claimant's supervisor communicated that continuing work was not available without explicitly using those words by telling claimant to "fucking leave," and nothing else in the record "would support a finding that claimant was welcome to remain at work").

Claimant knew that the employer expected her to return to work, and her failure to do therefore violated the employer's expectations. Further, because she did not tell the employer that she was not coming back that day but would be returning two days later, it is reasonable to infer that claimant did not consider that her actions would lead the employer to conclude that she had abandoned her job. As such, the record shows that claimant's failure to return to work was the result of indifference to the consequences of her actions, and therefore was at least a wantonly negligent violation of the employer's expectations.

Because claimant's conduct was a wantonly negligent violation of the employer's expectations, it is necessary to determine whether her actions can be excused as an isolated instance of poor judgment. However, the record as developed does not contain the evidence necessary to determine whether claimant's conduct was isolated. On remand, the ALJ should develop the record to show whether claimant had previously violated the employer's policies or expectations at any point; and, to the extent she did, when those violations occurred, what claimant did or failed to do in any such instance, and what expectations were violated as a result.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 26-UI-327557 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-327557 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 8, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-327557 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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 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 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.

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