

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0397

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 18, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0016619286). The employer filed a timely request for hearing. On April 13, 2026, ALJ Bender conducted a hearing, and on April 20, 2026 issued Order No. 26-UI-327652, affirming decision # L0016619286. On April 27, 2026, the employer filed an application for review of Order No. 26-UI-327652 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Station Hospitality, LLC employed claimant as a hotel front desk agent from November 8, 2023 through June 28, 2025.

(2) The employer expected their employees to attend work regularly unless excused, and required that requests for time off be made three weeks in advance. Claimant understood these policies.

(3) On June 24, 2025, the employer issued a warning to claimant regarding her attendance, a recent incident wherein a coworker complained that claimant had spoken to her rudely in front of customers, and an alleged threat by claimant to quit work if she had to continue working weekends. The attendance portion of the warning involved claimant having unexpectedly missed work on June 12, 2025 due to her vehicle breaking down far from home and not having alternate transportation to work. Claimant did not object to working weekends and did not threaten to quit if she continued to be scheduled to work those days.

(4) On June 27, 2025, claimant requested to have July 5, 2025 off work.

(5) On June 28, 2025, shortly after claimant clocked in for work, the hotel's general manager told her that her request to have July 5, 2025 off was denied due to staffing issues and the lateness of the request. Claimant responded that she would "just be calling out that day," and when the manager replied that that would "[not be] okay to do [and] would lead to termination," claimant said, "If I'm getting fired for that

then I could find another job by tomorrow.” Audio Record at 7:22 to 7:38. The manager then discharged claimant for making those statements. Claimant left the hotel and did not work for the employer again.

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 for making statements regarding a denied request for time off. At hearing, claimant testified that she did not recall having any issue with being required to work on July 5, 2025, or discussing a request for that day off being denied, and that she had been discharged without explanation or obvious cause immediately after clocking in for work on June 28, 2025. Audio Record at 15:25 to 17:09. In contrast, the general manager testified that after claimant clocked in on June 28, 2025, he told her that the request for time off on July 5, 2025, made the previous day, was denied; claimant responded that she would “just be calling out that day”; the manager replied that that would “[not be] okay to do [and] would lead to termination”; and claimant said, “If I’m getting fired for that then I could find another job by tomorrow.” Audio Record at 6:28 to 7:38. In weighing these accounts, claimant’s assertion that she was discharged upon clocking in for her shift, without any obvious cause or explanation, is less plausible than the employer’s detailed account of the moments preceding the discharge that reasonably explains the actions of the parties immediately thereafter. Accordingly, the facts regarding this incident have been found according to the employer’s account.

The employer reasonably expected that their employees would attend work as scheduled and request time off three weeks in advance. Claimant did not dispute that she understood those policies. Claimant requested a day off less than three weeks in advance, and when the request was denied, told her manager that she would nevertheless not work that day by “calling out,” and that she was unconcerned with facing discharge for doing so because she could find another job before that occurred. These statements demonstrated that claimant intended to engage in a course of conduct knowing that it would probably result in a violation of the employer’s reasonable attendance expectations, while indifferent to the

consequences of her actions and of the employer's interests. As such, the insubordinate statements amounted to a wantonly negligent violation of a standard of behavior which an employer has the right to expect of an employee.

However, isolated instances of poor judgment are not misconduct. Claimant's conduct involved poor judgment, but did not exceed mere poor judgment because it 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 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. Therefore, the determining factor is whether claimant's conduct on June 28, 2025 was a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

The employer asserted that four days prior to her discharge, on June 24, 2025, claimant was issued a warning for: "a pattern of calling out on Thursdays," specifically, June 12, 2025; "[speaking] rudely to a fellow . . . staff member in front of hotel guests," causing the staff member to feel "embarrassed [and] uncomfortable"; and on June 14, 2025, stating that she intended to "quit and find another job" if she had to continue working on weekends. Audio Record at 12:00 to 12:33. In rebuttal, claimant testified that she did not "recall a write-up" from that date, but asserted that she missed work on June 12, 2025 because her vehicle had broken down far away from work and she had no alternative transportation; and implicitly denied having threatened to quit over working weekends, testifying, "Weekends are what I wanted to work. They're what I work now . . . On the schedule, I'm always on weekends, that's what I liked. I liked working with my coworker on . . . those days." Audio Record at 18:05 to 19:21.

In weighing these accounts, the employer has not shown by a preponderance of the evidence that with regard to either claimant's absence from work on June 12, 2025, or her alleged threat to quit over working weekends, claimant willfully or with wanton negligence violated a reasonable employer policy. Claimant's testimony did not address the allegation that she spoke "rudely" to a coworker, but even if this were shown to be a willful or wantonly negligent violation of a reasonable employer policy, the incident's dissimilarity from the June 28, 2025 insubordinate statements that were the cause of her discharge prevents the two incidents from being viewed as a repeated act or pattern. Accordingly, claimant's conduct on June 28, 2025 was a single or infrequent occurrence within the meaning of the rule, and therefore an isolated instance of poor judgment, which is not 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-327652 is affirmed.

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

DATE of Service: June 5, 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 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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