EO: Intrastate
BYE: 09-Jan-2027

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

754
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0413

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective January 11, 2026 (decision # L0016362769).[1] Claimant filed a timely request for hearing. On April 13, 2026, ALJ Hall conducted a hearing, and on April 20, 2026 issued Order No. 26-UI-327646, reversing decision # L0016362769 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation. On April 28, 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. EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) South Coast Development Council, Inc. employed claimant as an entrepreneurship program manager from June 3, 2024 through January 7, 2026.

[1] Decision # L0016362769 stated that claimant was denied benefits from January 11, 2026 to January 9, 2027. However, as decision # L0016362769 concluded that the work separation occurred on January 7, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 4, 2026, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(2) The employer had a written policy prohibiting "bullying," defined in relevant part as "repeated, unreasonable actions of individuals (or groups) towards an individual or a group of employees, which is intended to intimidate and/or that creates a risk to the health and safety of the employee(s)." Exhibit 2 at 13.[2] The "bullying" policy also prohibited "engaging in any conduct that is disrespectful, insubordinate, or that creates a hostile work environment for another employee for any reason." Exhibit 2 at 13. The employer also had a written policy requiring that employees direct complaints first to "the Executive Director or their supervisor," except that "if the issue involves the Executive Director. . . the employee [may] contact the Board Chair." Exhibit 2 at 40. Claimant received copies of these policies, most recently in February 2025.

(3) Claimant and her supervisor, the executive director, had a contentious relationship for much of claimant's employment. The executive director believed that claimant disparaged her and her decisions to coworkers and others outside the organization on multiple occasions prior to October 2025.

(4) On October 1, 2025, claimant and a coworker spoke to two board members seeking to compel training regarding "bullying" for the employer's entire staff, and "leadership training" for the executive director, based on concerns about discrimination toward the coworker. Transcript at 19. Claimant and the coworker felt uncomfortable discussing this issue with the board chair, and therefore addressed it to other board members.

(5) On October 8, 2025, one of claimant's coworkers was having a "heated exchange" with the executive director and asked claimant to join them to "bear witness" to what was occurring, as the coworker had a condition that prevented her from "regulat[ing] her emotions." Transcript at 20. As soon as claimant entered the office where the interaction was taking place, the executive director told claimant to leave, and claimant believed that the executive director "smacked" claimant's arm while "shooing [her] out of the office." Transcript at 20. Claimant immediately called a board member to report this incident, but the call went unanswered, then claimant called and spoke with the board chair, who said he would respond immediately in person.

(6) On October 13, 2025, the executive director placed claimant on a 90-day disciplinary probation based on her belief that claimant had violated the chain-of-command policy in making complaints about her to board members on October 1 and 8, 2025, and in disparaging her and her decisions on multiple prior occasions. The terms of the probation required claimant to "[r]efrain from negative, disparaging, or divisive comments, always conducting [herself] professionally using collaborative communication," and to "[f]ollow proper communication channels [by] bring[ing] any concerns about leadership or operations directly to [the executive director]." Exhibit 1 at 2.

(7) During the probationary period, claimant received two warnings regarding her conduct. A November 4, 2025 warning involved claimant having made a post on LinkedIn to "celebrate" one of the employer's recent achievements that had not yet been publicly announced, and claimant was cautioned not to make such posts in the future until after a public announcement had been made. Exhibit 1 at 13. A December 15, 2025 warning involved an external complaint that, in the complainant's view, claimant did not demonstrate "a willingness to see opportunities for improvement or input, or understanding that there's

[2] Exhibit 2 consists of two files, one with 106 pages and the other 42 pages. Citations to Exhibit 2 in this decision treat the pages in the 42-page file as numbered consecutively to the 106-page file (for example, the first page of the 42-page file would be cited as "Exhibit 2 at 107.")

other ways to do things, and that there's not only one way," which the employer believed violated the probationary requirement that claimant use "collaborative communication." Transcript at 13. The employer decided not to discharge claimant for those incidents.

(8) On January 6, 2026, claimant needed to speak with the executive director about a work-related matter and went to the executive director's office, but found her engaged in a conversation with another employee. Claimant went to the nearby office of another employee, "C," who had just begun working for the employer the previous day. Claimant asked C how long the other employee had been speaking with the executive director, and appeared to be frustrated that she could not proceed with what she was working on until she could speak with the executive director. Claimant then asked C how she was adjusting to the new job, and C mentioned that she thought the way a software program was setup by the employer was unusual, and claimant agreed, stating that she "would have done it completely differently," and mentioned at other points in the conversation that she would "do a lot differently around here." Exhibit 2 at 108. Claimant ended the conversation by asking C to send her a message when she saw the other employee leave the executive director's office, and C agreed. Approximately 20 minutes later, C saw claimant walk back to the executive director's office and observe that the executive director was still busy with the other employee. Claimant said rhetorically to C, "[W]hat is taking so long[?]" and again appeared frustrated. Exhibit 2 at 108. While claimant and C discussed an unrelated matter, the executive director and the other employee walked by, claimant briefly spoke with the executive director, then claimant left the area.

(9) Shortly after this incident, C reported that claimant had repeatedly referred to the executive director during the earlier conversation as "that one" and pointed in the direction of the executive director's office, rather than referring to the executive director by name or title. C also reported claimant's apparent frustration at having to wait to speak with the executive director, and her comments that she would "do a lot differently around here."

(10) On January 7, 2026, the executive director discharged claimant based on her belief that claimant had disparaged her by referring to her as "that one" when speaking to C, and had disparaged her decisions by saying that she would "do a lot differently around here," thereby violating the expectations set forth for the probationary period and related written policy prohibiting "bullying."

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).

The employer discharged claimant based on C's report regarding claimant's conduct on January 6, 2026. While the employer asserted that claimant was discharged due to a pattern of disparaging conduct, the discharge analysis initially focuses on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g.*, *Appeals Board Decision* 09-AB-1767, June 29, 2009; *Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge). Claimant's alleged conduct while waiting to speak with the executive director on January 6, 2026 is therefore the initial focus of the analysis.

In a January 11, 2026 email to the employer, C wrote her account of what had occurred on January 6, 2026, including that claimant repeatedly said that she would "do a lot differently around here," and referred to the executive director as "that one" instead of by name or title, while pointing toward her office. Exhibit 2 at 108. C added that claimant seemed to sense C's surprise the first time claimant used the phrase "that one," and claimant then "made some statements about how [claimant's] brain doesn't work anymore and she's bad with names." Exhibit 2 at 108. C did not testify at the hearing.

In rebuttal, claimant testified that she did not recall referring to the executive director as "that one" in the conversation, and that the only mention of the executive director in the conversation was claimant saying, "[P]lease let me know when [executive director's first name] is out of the meeting with [the other employee] so I can come back and chat with her." Transcript at 23. Claimant also testified regarding the conversation, "I very well could have said how my brain doesn't work anymore. . . but to be honest with you, I don't recall exactly what was said in the moment." Transcript at 23-24. Claimant was asked if she recalled ever "speaking disparagingly of [the executive director] while in the office" during the probationary period, and responded, "I absolutely would never do such a thing, especially knowing what the cost was if I were to violate what was written in that document." Transcript at 24.

In weighing these accounts, claimant's first-hand testimony regarding the conversation with C is entitled to greater weight than C's written hearsay account. The employer's written argument asserted that because they alleged claimant had violated the policies at issue on multiple occasions preceding the January 6, 2026 incident, C's hearsay account should be given greater weight than claimant's testimony. The Employer's Written Argument at 2. However, claimant's testimony was given under oath and she was subjected to cross-examination, which stands in contrast to C's unsworn and untested written account. Therefore, where the accounts of the final incident conflict, the facts have been found in accordance with claimant's testimony. As such, the employer has not shown by a preponderance of the evidence that claimant disparagingly referred to the executive director as "that one" during the conversation with C.

Claimant did not specifically deny having told C that she would "do a lot differently around here," with regard to a software program setup or other unspecified issues, but when viewed in combination with claimant's testimony that she "would never" have spoken disparagingly of the executive director during the probationary period, the record fails to show that claimant knew or should have known that making this statement would be viewed as disparaging the executive director or any particular decision in violation of the expectation set forth in the probation terms. Therefore, the employer has not shown by a preponderance of the evidence that in making the statement claimant violated the expectation with wanton negligence. Accordingly, because the record fails to show that claimant willfully or with wanton

negligence violated an employer policy during the January 6, 2026 incident that was the proximate cause of her discharge, the discharge was not for 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-327646 is affirmed.

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

DATE of Service: June 9, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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