

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0418

Reversed
Disqualification

PROCEDURAL HISTORY: On February 2, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective December 21, 2025 (decision # L0015909332).¹ Claimant filed a timely request for hearing. On April 2, 2026, ALJ Andersen conducted a hearing, and on April 9, 2026 issued Order No. 26-UI-326562, reversing decision # L0015909332 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation. On April 29, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer submitted written arguments on April 29, 2026 and May 5, 2026. The employer did not state that they provided a copy of their April 29, 2026 argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, both arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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). EAB considered any parts of the employer's May 5, 2026 argument that were based on the hearing record.

The employer also asserted in their April 29, 2026 argument that the hearing proceedings were unfair or the ALJ was biased. 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).

¹ Decision # L0015909332 stated that claimant was denied benefits from December 21, 2025 to December 19, 2026. However, decision # L0015909332 should have stated that claimant was disqualified from receiving benefits beginning Sunday, December 21, 2025 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

FINDINGS OF FACT: (1) Bi-Mart Corporation employed claimant as a truck driver from May 2020 through December 23, 2025. Claimant hauled trailers of the employer’s merchandise from the employer’s warehouse in Eugene, Oregon to several of their retail stores throughout the state.

(2) The employer maintained policies which prohibited employees from “[f]alsifying company records, including work start and stop times,” and required that employees “[a]void neglecting work or sleeping at work.” Exhibit 1 at 13–14. The employer also maintained a policy requiring drivers to notify the employer as soon as possible when they faced unforeseen delays in their driving routes that exceeded two hours, or immediately if the delay was due to a vehicle breakdown. Exhibit 1 at 12. Claimant was aware of and understood these policies.

(3) Because of legal limitations on the amount of hours that drivers were permitted to work each day, the employer expected their drivers to arrive for work at a time that would minimize downtime throughout the course of the route for the day. Claimant was aware of this expectation.

(4) On or around December 17, 2025, the employer received reports from other employees that claimant had been arriving to the Eugene warehouse excessively early, so as to intentionally create significant amounts of downtime during his route. On December 18, 2025, the employer suspended claimant pending an investigation into the allegations.

(5) Based on their investigation, which included a review of detailed driving logs (“ELD logs”), the employer determined that claimant had been engaging in the alleged pattern of behavior for several months. Exhibit 1 at 3. In particular, the ELD logs showed that on multiple occasions, claimant had arrived at one of the destination stores on his route, parked and turned off his truck, and sat without performing any work for more than two hours. Instances of this behavior included: December 10, 2025, between 4:10 a.m. and 6:31 a.m.; December 11, 2025, between 3:41 a.m. and 6:55 a.m.; December 16, 2025, between 4:21 a.m. and 6:40 a.m.; and December 17, 2025, between 4:32 a.m. and 7:16 a.m. Exhibit 1 at 4, 5, 8, 9. All four of these instances took place at different stores in different parts of the state. The employer also reviewed surveillance footage of claimant’s truck, which showed that on November 24, 2025, claimant pulled into a store’s lot and remained in the cab of his truck for approximately two and a half hours until he moved the truck to back into the loading dock; that on December 10, 2025 claimant pulled into a store’s lot and remained in the cab of his truck for approximately two and a half hours until he moved the truck to back into the loading dock; and that on December 11, 2025, claimant backed into a store’s loading dock and remained in the truck’s cab for approximately three hours until store employees arrived to unload the trailer he was hauling. Exhibit 1 at 17–18. Claimant was paid for all of these periods of time. Claimant never reported these delays to the employer as required by their policy.

(6) On December 23, 2025, the employer discharged claimant because they determined that he had been leaving for his runs several hours earlier than necessary, creating unnecessary downtime for himself while on his route.

CONCLUSIONS AND REASONS: Claimant was discharged 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 because they determined that he had been leaving for his runs several hours earlier than necessary, creating unnecessary downtime for himself while on his route. The order concluded that claimant was not discharged for misconduct, explaining that, due to inconsistencies within the employer’s testimony regarding when claimant should have been starting work, claimant’s early arrival times were, at worst, a good faith error. Order No. 26-UI-326562 at 2–3. The record does not support this conclusion.

As a preliminary matter, the order under review’s analysis appeared to be based on a tacit finding that claimant’s conduct on December 17, 2025 was the proximate cause of his discharge. While December 17, 2025 was the last instance of the conduct in question, the record shows that the employer discovered all of claimant’s early work arrivals, and related periods of downtime, at the same time. As such, it is appropriate to consider all instances of the conduct in question as the proximate causes of the discharge.

Further, the order under review was correct in its assertion that the employer’s testimony was inconsistent regarding when claimant should have been starting work.² Indeed, it is difficult to determine from the record exactly when claimant should have arrived for work for any of the dates at issue, as the employer’s drivers’ schedules appeared to vary from day to day depending on what loads they were hauling and to which locations. However, it is not necessary to determine precisely what time the employer expected claimant to leave on any of the dates in question because claimant was, more likely than not, intentionally arriving at and leaving from the Eugene warehouse earlier than necessary for the purpose of creating downtime along his route.

The record shows that on each of November 24, 2025, December 10, 2025, December 11, 2025, December 16, 2025, and December 17, 2025, claimant arrived at a destination store along his route, parked his truck, and remained inside the cab for at least two hours. At hearing, the employer alleged that, during these periods, and despite being paid for the time, claimant was not performing any work for

² See, e.g., employer’s testimony, Transcript at 8–10.

the employer. Transcript at 17. By contrast, claimant asserted at hearing that he did not have such periods of downtime, because, for instance, he was always kept busy with work such as clearing homeless camps or debris from the stores' loading docks. Transcript at 24–25. Regarding December 17, 2025 in particular, as an explanation for the nearly three-hour period of idleness shown on the ELD log (between 4:32 a.m. and 7:13 a.m.), claimant testified, “That could have been a mechanical error. That could have been the brakes locked up on the trailer, and the trailer wouldn't move. So I'm trying to fix [the employer's] equipment to get it to move.” Transcript at 30–31. Claimant then testified, “But [on December 17, 2025], I guarantee you that was mechanical error in trying to get [the employer's] equipment back up on the road.” Transcript at 31. He further asserted that he documented mechanical failures in his logbook, as the employer required, and turned in his log every day; and that while he had created a “write-up” in his logbook for December 17, 2025, he did not remember what it related to. Transcript at 31, 33–34.

The employer rebutted claimant's assertion that he reported the alleged December 17, 2025 mechanical failures, and likewise testified that they did not receive any such reports for the other dates with the indicated downtime. The record does not contain documentary evidence to support claimant's assertion that he had logged or submitted reports of mechanical issues with his truck or other equipment on any of the dates at issue. Furthermore, claimant's above testimony, in which he attempted to explain the cause of the downtime on those days, was equivocal and contained internal inconsistencies which weighs against its reliability. If claimant had a clear recollection of what had caused the downtime on December 17, 2025, for instance, it is unlikely that he would have first guessed as to what might have caused it, then “guaranteed” what caused it. Thus, the record does not show, by a preponderance of the evidence, that the downtime on December 17, 2025 was the result of mechanical issues that claimant was working on.

Similarly, claimant asserted at hearing that the employer's equipment was not adequately maintained, and experienced regular breakdowns as a result. Transcript at 31. Claimant did not explicitly assert that mechanical failures or similar were the cause of all of the instances of downtime described above. However, to the extent that claimant was suggesting as such, this explanation is not plausible, as it is unlikely that the equipment claimant was using would experience repeated failures for multiple workdays in a row, around the same time of day, lasting for similar durations, and taking place in different parts of the state each time. The record contains no other plausible explanation for the periods of downtime that would show or suggest that claimant was using the time to perform work.

Instead, the most likely explanation for the periods of downtime is, as the employer concluded, that claimant had been purposefully starting his routes earlier than necessary in order to create downtime for himself. This is supported, first, by the employer's documentary evidence, including the ELD logs which indicate the specific times that claimant's truck was not running. The record also contains an email exchange in which two other employees, presumably members of management, discuss screenshots of video surveillance which purportedly showed claimant's truck not moving for between two and three hours on each of three occasions, during which time claimant did not exit the truck's cab. Exhibit 1 at 17–18. Claimant did not rebut the assertions in those emails. Additionally, the record shows that, on each of the dates in question, claimant failed to comply with the employer's requirement that drivers report delays of more than two hours as soon as possible. It stands to reason that if claimant was faced with actual delays caused by equipment failures or similar, lasting two hours or more, he would

have timely notified the employer of that fact. Conversely, the fact that he did not suggests that he did not have a valid work-related reason for the downtime.

Given the above, the preponderance of the evidence shows that claimant purposefully started his routes earlier than necessary in order to create downtime for himself for each of the five occasions in November and December 2025. Each of these instances therefore violated the employer's policies prohibiting the falsification of company records, including work start and stop times; and neglecting work. Further, as this conduct appears to have been intentional, claimant willfully violated the policies. Thus, claimant was discharged for multiple willful violations of the employer's standards of behavior. Finally, because claimant engaged in this conduct on at least five separate occasions, claimant's conduct was not isolated, and cannot be excused as an isolated instance of poor judgment.

For the above reasons, claimant was discharged for misconduct, and is therefore disqualified from receiving unemployment insurance benefits effective December 21, 2025.

DECISION: Order No. 26-UI-326562 is set aside, as outlined above.

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

DATE of Service: June 11, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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