EO: Intrastate
BYE: 27-Jun-2026

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

734
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0420

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 20, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 18, 2026 (decision # L0016671918).[1] Claimant filed a timely request for hearing. On April 20, 2026, ALJ Franco conducted a hearing, and on April 28, 2026 issued Order No. 26-UI-328491, reversing decision # L0016671918 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On April 30, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's written argument contained information not in the hearing record, relating to a post-hearing discussion between claimant and a current employee of the employer regarding pre-separation negotiations toward a separation agreement that, per the hearing record, was never executed by the parties.[2] Claimant's Argument at 4. This information is not relevant and material to the merits of EAB's decision, and claimant's argument therefore was not considered. ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019).

FINDINGS OF FACT: (1) Yamhill County School District # 29JT employed claimant as an educational assistant and student success coordinator at an alternative high school from September 2020 through January 23, 2026.

[1] Decision # L0016671918 stated that claimant was denied benefits from January 18, 2026 to June 27, 2026. However, decision # L0016671918 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 18, 2026 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

[2] Even if the record showed that an agreement had been reached by the parties in which the employer pledged not to oppose or contest claimant's claim for benefits, and the employer breached that agreement by requesting review of the hearing order, EAB would not be bound by such an agreement, and it would have no bearing on EAB's decision.

(2) The employer had policies that required their employees to maintain professional boundaries with students, and prohibited conduct that could be perceived as grooming students by exposing them to inappropriate sexual materials or discussions. Claimant was aware of these policies.

(3) On or shortly before December 5, 2025, the employer received complaints that claimant had violated their policies regarding maintaining boundaries and prohibiting grooming conduct by: "1. Handing her phone to a student to transfer photos and an explicit photo appeared showing adults engaging in oral sex; 2. Providing nipple rings to a student to place on another student's birthday cake; 3. Engaging in conversations about BDSM with students; 4. Providing a student with a sexually explicit book to read." Exhibit 1 at 5. Claimant had provided one or more nipple rings to a student, at school, to be placed on a cake at an out-of-school event for another student's eighteenth birthday. Claimant did not engage in the other conduct alleged, and denied those three allegations during the employer's subsequent investigation.

(4) Claimant was placed on administrative leave beginning December 5, 2025. State authorities also investigated the complaints, and later issued claimant a letter stating that they were unable to substantiate them. On January 20, 2026, the employer issued claimant a letter stating that they had concluded their investigation and were considering discharging her for the four alleged policy violations specified above, and that she was invited to attend a hearing the following day, after which a final decision would be made. Claimant was advised by union representatives that proceeding with the meeting would likely result in her discharge, and that a discharge under those circumstances would likely be detrimental to her finding other work with educational employers. Claimant therefore agreed that the representatives would seek to negotiate terms of the separation on her behalf, and claimant did not attend the meeting for that reason.

(5) On January 21, 2026, the employer rejected a proposed separation agreement submitted by union representatives, but gave them a counter proposal to forward to claimant. By the morning of January 23, 2026, the employer had not received a response to their counter proposal and told the union representatives that claimant had until noon that day to resign before a final decision recommending her discharge was conveyed to the school board. Claimant therefore submitted her resignation that morning with immediate effect, and did not work for the employer after that date. If a recommendation to discharge had been made, it would have been considered by the school board on January 27, 2026, and the discharge likely finalized at that time.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

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 order under review concluded that the work separation was a discharge because claimant faced "certain" discharge at noon on January 23, 2026, and submitted her resignation prior to that time only to avoid being discharged. Order No. 26-UI-328491 at 3. While the record supports that claimant faced an

imminent and inevitable discharge, as discussed in greater detail below, it does not support that claimant was actually discharged. The employer was willing to maintain the employment relationship through at least the time of a January 27, 2026 school board meeting, while claimant chose to end the relationship just prior to the noon January 23, 2026 deadline by which the employer said they would accept a resignation. Claimant did so in order to avoid the impact of a discharge on her future employment prospects. Because claimant could have continued in the employment relationship for an additional period of time, albeit likely only a matter of days, the work separation was a voluntary leaving.

Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Dept.*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. A claimant has good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects. *McDowell v. Employment Dept.*, 348 Or 605, 612, 236 P3d 722 (2010).

Claimant quit work in the morning of January 23, 2026 because she faced being discharged on January 27, 2026, and the employer indicated that they would not accept a resignation after noon on January 23, 2026. The parties did not dispute the timing or likelihood of claimant's potential discharge, and therefore just prior to the moment claimant resigned, her discharge was, more likely than not, both imminent and inevitable. The employer did not rebut claimant's assertion that being discharged based on allegations such as the ones made against claimant would be detrimental to her prospects of securing future employment in education. Therefore, the remaining question under the *McDowell* analysis is whether the discharge would have been for misconduct.

"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). 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 discharge claimant faced was based on allegations that she violated the employer's expectations regarding maintaining professional boundaries with students, and avoiding conduct that could be perceived as "grooming" them. The record shows that claimant understood these expectations. The employer's witness at hearing did not purport to have personally seen or heard claimant engage in any of

the conduct alleged, and the employer therefore presumably based their assertion that claimant engaged in the conduct on the hearsay accounts of others. In contrast, claimant testified that, with respect to three of the four allegations, she did not engage in the conduct alleged and was generally unaware of what led to those allegations being lodged against her.[3] Audio Record at 18:32; 19:45; 20:38. Those three hearsay allegations are entitled to less weight than claimant's sworn testimony denying them, and therefore the weight of the evidence supports that claimant did not commit those three alleged violations.

The remaining allegation, that claimant gave a student one or more nipple rings to display on the birthday cake of another student, was admitted by claimant at hearing. Audio Record at 19:08. Claimant implied that this was done in a joking manner, and that she did not expect the rings to be worn or viewed as a gift of more than negligible value. It is reasonable to infer that claimant acted with indifference to the consequences of her actions, and that she knew or should have known that providing the rings to the student would likely be viewed as violating professional boundaries with students. As such, claimant violated the employer's reasonable requirement that she maintain professional boundaries with wanton negligence.

However, isolated instances of poor judgment are not misconduct. Claimant's conduct involved poor judgment, and as the other allegations against her were unproven at hearing, was isolated because it was a single occurrence. Providing a gift of this nature to a student, even one who was eighteen years old and received it at an event outside of school in a joking context, transgressed appropriate boundaries between educator and student. Nevertheless, the conduct 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 was not likely to reoccur, did not impede any essential aspect of the relationship, or threaten its continued existence. Therefore, the conduct did not exceed mere poor judgment, and constituted an isolated instance of poor judgment within the meaning of the rule, which is not misconduct. Accordingly, claimant quit work to avoid a discharge that would not have been for misconduct, and which was imminent, inevitable, and would have substantially impaired her prospects for future employment. Therefore, claimant quit work with good cause under the holding in *McDowell*.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-328491 is affirmed.

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

DATE of Service: <u>June 12, 2026</u>

[3] Claimant testified regarding the allegation that she provided a student "with a sexually explicit book to read" that she understood the book in question to be *Butcher & Blackbird*, which claimant made available to students generally, but did not give to any particular student; and that claimant had not read it herself, but understood it to be written for a "young adult" audience and not sexually explicit. Audio Record at 19:54; 20:52.

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.surveygizmo.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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