

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0421**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 18, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct connected with work and disqualified from receiving benefits from March 1, 2026 to February 27, 2027 (decision # L0016537321). Claimant filed a timely request for hearing. On April 2, 2026, ALJ Wahl conducted a hearing, and April 10, 2026 issued Order No. 26-UI-326701, modifying decision # L0016537321 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective March 1, 2026, until requalified. On April 30, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER AND WRITTEN ARGUMENT:** Claimant submitted a written argument by email on May 19, 2026. Claimant attached photographs and a text message to the argument, which EAB construed as a request that EAB consider the attachments as additional evidence under OAR 471-041-0090(1)(b) (May 13, 2019).

Under OAR 471-041-0090(1)(b), “Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that: (A) The additional evidence is relevant and material to EAB’s determination, and (B) Factors or circumstances beyond the party’s reasonable control prevented the party from offering the additional evidence into the hearing record.”

Claimant’s request is denied. Claimant failed to show that the materials attached to her written argument could not have been offered into the record either at hearing or during the period after the hearing during which the ALJ allowed the parties to submit documents. Specifically, at hearing, the ALJ held the record open until close of business the next day for the parties to submit proposed exhibits. *See* Audio Record at 12:39 to 14:05, 19:20 to 21:17. Both claimant and the employer submitted proposed exhibits, which the ALJ entered into the hearing record and attached to the order under review to afford the parties an opportunity to object. *See* Order No. 26-UI-326701 at 1. No objections were lodged by either party.

The issue at hearing was whether claimant engaged in misconduct connected with work by violating the employer's professional conduct policy by sending texts to a fellow employee and friend, via her personal cell phone during work hours, in which she used racial slurs about work matters and other employees.

The employer submitted a group of text messages from claimant to the employee, which the ALJ marked as Exhibit 1. These reflected occasions in December 2025 when, while texting with the fellow employee via her personal cell phone during work hours, claimant used a racist insult that begins with the letter "n" to refer either to a group of people or as an expression to convey the doing of a task crudely. For example, on December 12, 2025 during work hours, claimant wrote to the employee, regarding a group of African employees, "Oh yeah they are a fkn true band of niggers" and "I dont know why we dont get rid of them." Exhibit 1 at 4. On another occasion, also on that day during work hours, claimant wrote: "I will but you won't take any job they all niggers" and "There [*sic*] protected[.]" Exhibit 1 at 5. The employer also submitted a copy of their written professional conduct policy, which the ALJ marked as Exhibit 2. The exhibit showed that claimant acknowledged receiving and reviewing the policy on May 27, 2025, and below her signature, wrote by hand, "I use my personal phone for work all day every day." Exhibit 2 at 8.

Claimant submitted a group of text messages between her and the employee, which the ALJ marked as Exhibit 3. These reflected occasions when the employee initiated use of the slur or began a discussion about a group of employees, and claimant then agreed with use of the slur or responded by using it herself. For example, on one occasion, the employee wrote, "[W]as nothing but nice to the guy. You know he's a fucking nigger" to which claimant responded, "Yes yes he is[.]" Exhibit 3 at 6. On another occasion, the employee wrote to claimant, "Let me guess it's replace them with Africans" to which claimant responded, "Exactly niggers all get the work[.]" Exhibit 3 at 7.

The documents claimant submitted, Exhibit 3, did not include the materials claimant now wishes EAB to consider as additional evidence. Accordingly, given that claimant had ample opportunity to offer the photographs and text message into the hearing record but failed to do so, she did not show that factors or circumstances beyond her reasonable control prevented her from offering the additional evidence into the hearing record, and therefore her additional evidence request is denied.

Turning to the substantive points made in claimant's written argument,<sup>1</sup> claimant made two major assertions. First, claimant argued that her text messages did not constitute misconduct because they were sent via her personal cell phone. Claimant's Argument at 1. It is immaterial that claimant sent the texts via her personal cell phone because the texts were work-connected and thus were a valid basis to discharge claimant for misconduct within the meaning of unemployment insurance law. *See Levu v. Employment Dep't*, 149 Or App 29, 941 P.2d 1056, 1058 (1997), discussing *Muscatell v. Employment Division*, 77 Or App 24, 28, 711 P.2d 192 (1985) ("We have previously held that the 'work-connectedness' of claimant's off-duty conduct is not limited to impairment of claimant's job performance or ability to do the job. It is enough that the ramifications that flow from claimant's actions negatively impact the morale or atmosphere of the workplace."). Claimant's texts were work-connected because, while they may have been sent via claimant's personal cell phone, they nevertheless were sent

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<sup>1</sup> The text of the argument contained some 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, EAB considered only information received into evidence at the hearing.

to a fellow employee, during work hours, and referred to work matters or particular employees. Furthermore, claimant acknowledged that she used her personal cell phone for work matters, as she stated, below her signature in Exhibit 2, “I use my personal phone for work all day every day.” Exhibit 2 at 8.

Next, claimant argued that her use of the racial slur in the texts was not misconduct because she used it merely as a curse word and not with any racial animus. Claimant’s Argument at 1; *see also* Audio Record at 25:08 (“I’m by far not at all racist . . . people just use it as a curse word.”). This assertion is false as claimant used the word as a racist insult numerous times. For example, she referred to a group of African employees as a “true band of” the hateful word and stated “I dont know why we dont get rid” of the employees. Exhibit 1 at 4. On another occasion, after the fellow employee wrote, “Let me guess it’s replace them with Africans,” claimant stated, “Exactly niggers all get the work[.]” Exhibit 3 at 7. While claimant may have at times used the word in the texts to convey the doing of a task crudely, that usage of the word is based on a racist stereotype and is no less hateful and inappropriate.

As the order under review correctly concluded, claimant’s use of the slur with the other employee, on numerous occasions, during work hours, and about work matters or other employees, was a wantonly negligent violation of the employer’s policy and not an isolated instance of poor judgment or good faith error. *See* Order No. 26-UI-326701 at 3. Accordingly, the order appropriately concluded that claimant was discharged for misconduct.

**ADOPTION OF HEARING ORDER:** EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with Order No. 26-UI-326701’s findings of fact, reasoning, and conclusion that claimant was discharged for misconduct and disqualified from receiving benefits effective March 1, 2026. Order No. 26-UI-326701 is **adopted**. *See* ORS 657.275(2).

**DECISION:** Order No. 26-UI-326701 is affirmed.

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 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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