

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0423**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 17, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge (decision # L0014693929). The employer filed a timely request for hearing. On April 22, 2026, ALJ Blam conducted a hearing, and on April 28, 2026 issued Order No. 26-UI-328482, affirming decision # L0014693929. On April 30, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Neah Kah Nie School District No. 56 employed claimant from November 21, 2016 through September 23, 2025, most recently as head custodian.

(2) The employer had a written drug policy that provided, “An employee shall not, in the workplace, possess a controlled substance.” Audio Record at 14:15. Claimant received a copy of this policy annually.

(3) On Saturday, September 6, 2025, claimant was not scheduled to work but stopped by one of the employer’s elementary schools to drop off some supplies he had acquired to make a bookshelf for the school. While bringing in the supplies, claimant discovered a small package with the letters “THC” on it on the loading dock. Concerned that the package might contain a controlled substance, claimant brought it into the school building and set it among the supplies he was carrying in, intending to seek approval to dispose of it. In a previous incident where suspected drugs had been found on school property, claimant’s then-supervisor had simply destroyed the suspected drugs, but claimant was unsure if that remained the correct procedure and wanted to seek guidance.

(4) While at the school, claimant encountered several other adults, including the head of grounds and maintenance, who was claimant’s direct supervisor, the school principal, and the local fire marshal. Claimant was told that the fire marshal intended to possibly delay the start of the school year by one

month due to something claimant had done.<sup>1</sup> Claimant was also told by his supervisor that he was not allowed to work on Saturdays for insurance reasons and that he should leave. Claimant was so upset by news of the school year potentially being delayed due to something that he had done that he felt unable to drive and decided to paint bookshelves for approximately 30 minutes while he calmed down. Additionally, claimant lost track of the “THC” package among the supplies and forgot about it.

(5) As claimant finished painting the bookshelves, the principal encountered him and escorted him out of the school. The employer did not have written policies prohibiting a head custodian from working on Saturdays, or prohibiting conduct such as his delay in leaving the school when first directed. The employer therefore had not intended to discharge claimant at that point for having come to the school on a Saturday or having stayed there after being told by his supervisor to leave.

(6) As claimant drove home from the school, he remembered the “THC” package and was concerned that even though it was a weekend during the summer break, community members still had access to the school, and a child could possibly discover the package before claimant’s next scheduled shift on Monday. Claimant texted the principal, requesting to speak with her by phone, but she was not immediately available. Claimant therefore drove back to the school to retrieve the package himself. However, after searching the supplies, he was unable to locate it. Claimant then spoke with the principal by phone about the situation and texted other custodial employees to be on the lookout for the package when they came to work. The package was never located, and the employer began an investigation into the incident.

(7) On September 23, 2025, the employer discharged claimant for some of his actions on September 6, 2025. In a letter stating the reasons for his discharge, the employer cited claimant’s failure to immediately alert the principal or superintendent “upon finding drugs”; losing track of the “drugs” in the school building; and entering the building outside of work hours after being directed not to do so. Exhibit 1 at 3. The employer decided that lesser discipline was not appropriate because they believed that claimant had displayed poor judgment on multiple prior occasions, though there were no recent incidents involving alleged violations of the drug possession policy or similar conduct.<sup>2</sup>

**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

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<sup>1</sup> The parties did not elaborate on this matter, and the employer did not assert that whatever conduct claimant may have engaged in that prompted the fire marshal to make this assertion factored into the decision to discharge claimant.

<sup>2</sup> A November 7, 2022 “Letter of Direction” in claimant’s personnel file alluded to an incident wherein the principal believed she smelled the odor of cannabis near claimant’s workstation, but a search of his person and belongings yielded no further evidence of cannabis possession or recent use, and no discipline was apparently imposed. Exhibit 1 at 6.

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 for conduct relating to his discovery on a school loading dock of a package with the marking “THC” and the events that followed. While claimant engaged in other conduct that day which the employer disapproved of, including coming to work on Saturday and failing to immediately leave the building when directed by his supervisor, the employer’s superintendent implied at hearing that this conduct was not considered part of the proximate cause of his discharge because the employer did not have written policies that the superintendent believed specifically prohibited those actions. *See* Audio Record at 18:07 (“I don’t have a policy that says staff can’t come to work on Saturday.”); 19:58 (“I don’t have a policy on insubordination, but that’s what this rose to [regarding claimant’s initial failure to leave and subsequent return to the school], and that was factored into the reason for termination.”). In considering this evidence, it is more likely than not that the proximate cause of claimant’s discharge was solely his conduct related to the discovery and loss of the “THC” package, which is therefore the focus of the discharge analysis.<sup>3</sup>

The employer had a written policy that provided, “An employee shall not, in the workplace, possess a controlled substance.” Claimant knew of this policy. The employer did not rebut claimant’s account of his actions that allegedly violated that policy: that he found a package marked “THC” on school property and brought it into the building for the sole purpose of reporting it to the administration and destroying it, but, in the aftermath of receiving upsetting news and being escorted out of the building, he lost track of it, and it was not located again by either party. Claimant attempted to notify the principal as soon as he remembered that the package had been left in the school, and returned to the school not to resume the work he had earlier been prohibited from continuing, but solely to secure the package.

As a preliminary matter, the record fails to show by a preponderance of the evidence that the package actually contained a controlled substance at the time claimant brought it into the school, as neither party opened it, and claimant was unsure of its labeling other than it contained the letters “THC.” Furthermore, claimant’s brief exercise of control over the package cannot reasonably be viewed as “possess[ing]” it or its contents within the meaning or purpose of the policy, since he did so only to ensure its destruction. The superintendent was asked at hearing if the employer had a policy “that deals with what someone should do if they find [drugs] outside of the building,” and he replied in the negative. Audio Record at 16:08. Under these circumstances, claimant dealt with the situation in the manner he believed best aligned with the employer’s policies, which initially was to secure the package by bringing it into the building, then report its discovery and destroy it. Claimant’s delay in reporting and destroying the package, during which the package disappeared, was prompted by claimant being distracted by learning upsetting news, then being ejected from the school. These actions, and claimant’s subsequent efforts to involve school administration and locate the package once he remembered leaving it in the building, demonstrated that he was not indifferent to the consequences of his actions, or of the employer’s interests. Therefore, the employer has not shown that claimant willfully or with wanton

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<sup>3</sup> *See, e.g., 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); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

negligence violated their drug possession policy. Accordingly, claimant's discharge was not for misconduct.

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the discharge.

**DECISION:** Order No. 26-UI-328482 is affirmed.

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

**DATE of Service: June 10, 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 desisyong ito.

## 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 محكمة 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.

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