

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0426

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 2, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, disqualifying claimant from receiving benefits effective August 24, 2025 (decision # L0016285754).¹ Claimant filed a timely request for hearing. On April 7 and 23, 2026, ALJ Laurie-Gardiner conducted a hearing, and on April 28, 2026, issued Order No. 26-UI-328426, reversing decision # L0016285754 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On May 4, 2026, the employer filed an application for review the Employment Appeals Board (EAB).

WRITTEN ARGUMENT AND EVIDENTIARY MATTER: EAB granted the employer's request to extend the written argument deadline, and extended the deadline to June 8, 2026. The employer submitted a written argument on June 1, 2026.

The employer's submission consists of: (1) a page declaring that they sent a copy of the argument to claimant; (2) a page in which the employer asserts that claimant locked the employer out of a Google drive link claimant had used prior to the hearings in this matter to serve by email claimant's proposed exhibits on the Office of Administrative Hearings (OAH) and the employer; (3) a seven-page substantive written argument, which includes a request that EAB consider attached documents as additional evidence; and (4) a 32-page group of documents, most of which the employer had submitted to the ALJ as proposed exhibits, but which the ALJ did not admit because the documents were irrelevant.

Taking these sections of the employer's submission in turn, as to the employer's assertion that they were locked out of claimant's Google drive link, it is immaterial that they were locked out. The link had been

¹ Decision # L0016285754 stated that claimant was denied benefits from October 5, 2025 to October 3, 2026. However, as decision # L0016285754 found that claimant was discharged on August 28, 2025, the decision should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 24, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

used to serve claimant's proposed exhibits prior to the April 7, 2026 hearing session in this matter. It does not matter that the employer had been locked out of the link because (as explained below) none of the documents from the link were admitted into evidence except for certain text messages, marked as Exhibit 3, which were largely duplicative of the employer's own text messages, marked as Exhibit 2, which were also admitted into evidence.

As to the seven-page substantive written argument, that portion of the employer's submission 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's seven-page substantive written argument that were based on the hearing record.

As to the request for EAB to consider the employer's 32 pages of documents attached to the written argument as additional evidence, the request is denied.

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."

To evaluate the additional evidence request, it is helpful to review the ALJ's rulings on exhibits. Prior to the April 7, 2026 hearing session, the employer emailed OAH a video depicting the final incident leading to claimant's discharge. At the April 7, 2026 hearing, claimant confirmed that he was served with the video by email. April 7, 2026 Audio Record at 8:36. The ALJ admitted the video into the hearing record as Exhibit 1. April 7, 2026 Audio Record at 10:43, 16:44.

Also prior to the April 7, 2026 hearing session, the employer mailed to OAH a packet of proposed exhibits consisting of, among other things, a letter referencing a separate former employee's arbitration matter, text messages, an Oregon Bureau of Labor and Industries (BOLI) complaint filed by claimant against the employer, and Oregon Secretary of State business registration forms. At the April 7, 2026 hearing, claimant advised that he received a notice on his door that the US Postal Service had attempted to serve these documents on him, but he was not home. April 7, 2026 Audio Record at 14:32. The ALJ marked these documents as Exhibit 2, but stated that many of the documents were likely to be irrelevant, and that he was reserving ruling on the documents until a later time. April 7, 2026 Audio Record at 12:28, 15:18.

The day before the April 7, 2026 hearing session, claimant emailed to OAH and the employer a Google drive link (referenced above) of proposed exhibits consisting of a spreadsheet, an index, text messages, and payroll statements, among other documents. At the April 7, 2026 hearing session, the employer confirmed they were served the link by email and had reviewed the documents. April 7, 2026 Audio Record at 12:27. The ALJ marked these documents as Exhibit 3, but stated that many of the documents were likely to be irrelevant, and that he was reserving ruling on the documents until a later time. April 7, 2026 Audio Record at 12:34, 15:18.

The ALJ then commenced taking testimonial evidence during the April 7, 2026 hearing session. After he began doing so, the ALJ noted that the text messages contained in Exhibit 2 were relevant, and admitted those documents into the hearing record. April 7, 2026 Transcript at 16-18. The hearing was continued to April 23, 2026.

On April 22, 2026, the employer emailed OAH and claimant the same packet of proposed exhibits they had previously mailed, with an added US Postal Service tracking sheet showing claimant had not picked up the packet after the notice had been left on his door. On April 23, 2026, shortly before the hearing session began, the employer emailed OAH and claimant a letter from their CPA outlining a history of their business.

At the April 23, 2026 hearing session, the ALJ noted that Exhibit 1 and the text messages from Exhibit 2 were in evidence, and addressed the employer's re-sent packet of proposed exhibits and documents attached in their April 23, 2026 email by reiterating that the documents were likely to be irrelevant but that he was reserving ruling on their admissibility until a later time. April 23, 2026 Audio Record 4:40 to 7:25. The ALJ then compared the text messages contained in Exhibit 3 to that from Exhibit 2, which were already admitted into evidence, and concluded that though largely duplicative of Exhibit 2, the text messages contained in Exhibit 3 were relevant and admitted those documents into evidence. April 23, 2026 Audio Record at 11:54 to 13:13. The ALJ then commenced taking testimonial evidence during the April 23, 2026 hearing session and concluded the hearing without revisiting the admissibility of the documents contained in Exhibits 1 and 2, other than the text messages he had already admitted. On April 28, 2026, the ALJ issued the order under review in this matter, which stated that Exhibit 1 and the text messages from Exhibit 2 and 3 were admitted into evidence, but that "[a] other documents offered for admission into evidence were excluded due to being immaterial and/or irrelevant." Order No. 26-UI-328426 at 1.

The 32-page group of documents that the employer wishes EAB to consider as additional evidence largely consists of documents the ALJ excluded from the hearing record as irrelevant. The documents consist of: (1) the letter from the employer's CPA outlining a history of their business; (2) an email from their payroll administrator stating timeframes when a separate former employee handled payroll; (3) the US Postal Service tracking sheet showing claimant had not picked up the employer's packet of proposed exhibits after the Postal Service had left notice of the packet on claimant's door prior to the April 7, 2026 hearing session; (4) Oregon Secretary of State business registration forms relating to the employer's business; (5) a BOLI complaint filed by claimant against the employer; (6) Oregon Secretary of State business registration forms relating to a business claimant formed; (7) pleadings from the separate former employee's arbitration case against the employer; and (8) written statements from three individuals. As to items (1) through (7), above, the employer's additional evidence request is denied because the information is not relevant and material to EAB's determination of whether claimant's discharge was for misconduct per OAR 471-041-0090(1)(b)(A).

As to item (8) above, the three written statements, one statement is attributed to the employer's co-owner, who testified at hearing. *See* April 23, 2026 Transcript at 72-77. EAB denies the additional evidence request as to this person's statement because the employer could have elicited the information at hearing and so factors or circumstances beyond their reasonable control did not prevent them from offering the additional evidence into the hearing record per OAR 471-041-0090(1)(b)(B). A second statement is attributed to a person who the employer did not arrange to testify at hearing. EAB denies

the additional evidence request as to this person's statement because the employer did not show why the person could not have testified at hearing and so did not establish that factors or circumstances beyond their reasonable control prevented them from offering the additional evidence into the hearing record per OAR 471-041-0090(1)(b)(B). The third statement is attributed to the employer's principal owner's father, an individual who appeared at hearing, but advised that he had no relevant testimony to offer and so departed the hearing line without testifying. *See* April 23, 2026 Transcript at 69-71. EAB denies the additional evidence request as to this person's statement because the information is not relevant and material to EAB's determination under OAR 471-041-0090(1)(b)(A).

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-328426's findings of fact, reasoning, and conclusion that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. Order No. 26-UI-328426 is **adopted**. *See* ORS 657.275(2).

DECISION: Order No. 26-UI-328426 is affirmed.

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

DATE of Service: June 17, 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

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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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