

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0487

Affirmed
Request to Reopen Allowed
No Disqualification

PROCEDURAL HISTORY: On September 18, 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 # L0013038883). The employer filed a timely request for hearing. On March 6, 2026, notice was mailed to the parties that a hearing was scheduled for March 18, 2026. On March 18, 2026, ALJ Krueger conducted a hearing at which claimant failed to appear, and issued Order No. 26-UI-324140, reversing decision # L0013038883 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective August 3, 2025. On March 30, 2026, claimant filed a timely request to reopen the March 18, 2026 hearing. On April 30, 2026, ALJ Krueger conducted a hearing, and on May 1, 2026 issued Order No. 26-UI-329065, allowing claimant's request to reopen and affirming decision # L0013038883 on the merits.¹ On May 8, 2026, the employer filed an application for review of Order No. 26-UI-329065 with the Employment Appeals Board (EAB).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 26-UI-329065 allowing claimant's request to reopen the March 18, 2026 hearing. That part of Order No. 26-UI-329065 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) Royal Guard Security, LLC employed claimant as a security captain from 2024 through August 6, 2025.

(2) Claimant was assigned to work at a building under construction in the Springfield, Oregon area with two other security guards, while much of the employer's other operations took place in the Portland, Oregon area. The employer expected claimant to check in once every hour during his shifts using a phone app, and claimant understood that expectation.

¹ Only the April 30, 2026 hearing was transcribed; therefore, citations to the transcript refer to that hearing, and citations to the audio record refer to the March 18, 2026 hearing.

(3) On August 6, 2025, claimant was scheduled to work at 7:00 a.m. and checked in with the employer at 7:05 a.m., which was in accordance with the employer's policies.² Claimant thereafter put his phone in silent mode because he constantly received message notifications regarding group texts that generally did not concern him or the Springfield worksite, and he found the notifications distracting. Claimant did not believe that putting the phone in silent mode violated any employer policy.

(4) Claimant failed to check in with the employer at 8:05 a.m. or at any time thereafter that morning, as he was focused on work-related communications with tradespeople at the worksite and forgot to do the check-ins. At 8:28 a.m., the employer texted claimant that they had received a report from one of the other guards at the Springfield worksite that a patrol vehicle had a punctured tire, and requested that claimant investigate further. When claimant failed to respond, the employer continued to message and call claimant, with the final message being sent at 10:05 a.m., the time claimant missed his third consecutive hourly check-in. Claimant was unaware of these attempts to contact him due to his phone being in silent mode.

(5) After the 10:05 a.m. message went unread, the employer directed the other two Springfield security guards to search for claimant, with one searching the interior and the other the exterior of the building. After completing their searches, each reported to the employer that they were unable to locate claimant. The employer sent another security guard to the Springfield worksite to replace claimant, fearing that he had become incapacitated outside of the search area, or had left work entirely. At approximately 10:42 a.m., the security guards located claimant in the building and reported to the employer that he seemed "either sleepy or intoxicated." Audio Record at 8:00.

(6) At 10:42 a.m., claimant read the 8:28 a.m. message. Within a few minutes, claimant called the employer. The employer believed that claimant "was slurring" his speech during the call and "sounded extremely. . . sleepy. . . or kind of out of it." Transcript at 34. Claimant gave the reason for his apparent absence and failure to check in as his having been in the bathroom, though claimant intended to convey that he had been in the bathroom for only the last ten to fifteen minutes and had spent the rest of the time working with tradespeople. The employer discharged claimant during the call for having failed to check in every hour that morning, believing that he had been absent from the worksite or not performing work for approximately three hours.

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 violation of the standards of behavior which an employer has the right to expect of an employee." OAR

² Claimant testified that these events occurred on August 5, 2025. Transcript at 14. However, the employer's records on this point are likely more reliable than claimant's memory, and the date has been found in accordance with the employer's records showing that the events occurred on August 6, 2025.

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 failing to check in hourly during his shift on August 6, 2025. The employer reasonably expected their security guards to complete hourly check-ins, and claimant understood this requirement. The employer asserted that claimant did not check in after 7:05 a.m., and next contacted the employer during the 10:45 a.m. phone call in which he was discharged. Claimant disputed this timeline at hearing, testifying that he next communicated with the employer “an hour or two” after the 7:05 a.m. check-in. Transcript at 17. However, claimant conceded that he had not timely completed the 8:05 a.m. check-in because he “forgot about it” due to “just being busy with the site.” Transcript at 18-19. In weighing claimant’s vague recollection of the timeline against the employer’s specific testimony based on timestamped phone records, the employer’s testimony on this point is entitled to greater weight, and the facts have been found accordingly. Therefore, more likely than not, claimant failed to check in with the employer between 7:05 a.m. and shortly after 10:42 a.m.

The employer presented circumstantial evidence in rebuttal of claimant’s testimony that he had simply forgotten to perform the hourly check-ins due to being preoccupied with other work duties and a ten-to-fifteen minute bathroom break, suggesting instead that for approximately three hours, claimant had either left the worksite or had concealed himself somewhere in or around the building to sleep or use intoxicants. This circumstantial evidence included claimant’s failure to read or respond to calls and messages, including an 8:28 a.m. message asking him to investigate a problem with a patrol car; hearsay accounts of two other security guards who told the employer they had searched for claimant inside and outside of the building to no avail until approximately 10:42 a.m., and that when they encountered him he appeared sleepy or intoxicated; and the employer’s testimony that when she spoke with claimant by phone at that time, he sounded sleepy or “kind of out of it.” In contrast, claimant asserted in his testimony that he had been unaware of the employer’s attempts to communicate with or locate him due to his phone being in silent mode;³ that he had not been sleeping or under the influence of intoxicants that morning, but had been performing his usual work duties except during a bathroom break; and that when he encountered the other security guards at approximately 10:42 a.m., they merely conveyed that the employer had been trying to communicate with him, but did not appear to have been urgently searching for him or concerned about his whereabouts or activities during the prior three hours. Transcript at 17-20.

In weighing these explanations for claimant’s failure to complete hourly check-ins, the employer’s circumstantial evidence suggestive of deliberate indifference to the employer’s interests is no more than equally balanced with claimant’s explanation at hearing that he was distracted with other work and did not consciously, without regard for the consequences of his actions, decide not to complete the check-ins. As such, the employer has not met their burden to show by a preponderance of the evidence that claimant’s failure to complete the check-ins resulted from more than ordinary negligence. 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 work separation.

³ The record does not show that claimant knew or should have known of an employer policy prohibiting him from putting his phone on silent mode while focused on other work. As such, to the extent this violated the employer’s expectations, it was not the result of wanton negligence.

DECISION: Order No. 26-UI-329065 is affirmed.

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

DATE of Service: June 18, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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