

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0502

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 16, 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 February 15, 2026 (decision # L0017123501).¹ Claimant filed a timely request for hearing. On May 5, 2026, ALJ Wahl conducted a hearing, and on May 8, 2026 issued Order No. 26-UI-329785, reversing decision # L0017123501 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On May 12, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision. The employer did not state that they provided a copy of their May 12, 2026 argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). That argument, as well as the employer's May 21, 2026 argument, 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2). EAB considered any parts of the employer's May 21, 2026 argument that were based on the hearing record.

FINDINGS OF FACT: (1) 10th & Alder Hotel Manager, LLC employed claimant as a hotel general manager from June 3, 2024 through February 16, 2026.

(2) The employer had a written confidentiality policy that provided, in relevant part: "[I]nformation . . . obtained in regard to Company business may not be disclosed to anyone, except where required for a

¹ Decision # L0017123501 stated that claimant was denied benefits from February 22, 2026 to February 20, 2027. However, as decision # L0017123501 concluded that the discharge occurred on February 16, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 15, 2026, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

business purpose. Team members must not disclose any confidential information, purposefully or inadvertently through casual conversation, to any unauthorized person inside or outside the Company. Team members who are unsure about the confidential nature of specific information must ask their supervisor for clarification.” Exhibit 2 at 22. The employer also had a written policy that provided: “You are prohibited from making your own audio recordings of any work place conferences or discussions without specific authorization from your manager.” Exhibit 2 at 20. Claimant acknowledged receipt of a copy of these policies at hire.

(3) By January 2026, a contentious relationship had developed between claimant and the hotel’s maintenance supervisor. Claimant believed that the maintenance supervisor at times spoke to her with an inappropriate tone, volume, and intensity, and in meetings with others would speak over her or exclude her. During January 2026, claimant made multiple requests to upper management to mediate between the two of them to resolve these issues, or to otherwise intervene in the maintenance supervisor’s conduct. Upper management refused these requests, directing claimant to meet with the maintenance manager and resolve these issues without their involvement.

(4) On January 22, 2026, claimant met with the maintenance supervisor and other department supervisors. Claimant used a personal device to record audio of the meeting, and later had the audio transcribed. Claimant had not sought permission from upper management to record the meeting. Claimant’s purpose in recording the conversation was to demonstrate to upper management the need for their intervention if the maintenance supervisor acted on that occasion as he had in previous encounters.

(5) On January 24, 2026, claimant sent the recording and transcript to all supervisors, including those present at the meeting, as well as a front desk employee who was being considered for a front desk supervisor position. Claimant felt that information concerning the “conflict” regarding the maintenance supervisor was necessary to share with those recipients because “everybody was involved in it” and it “was impacting the entire team.” Transcript at 22. Regarding the front desk employee, claimant “wanted him to be aware of what was happening” due to his “potential to become a supervisor” and his awareness of “the tension that was surrounding all of the management team at that time.” Transcript at 16. Claimant did not believe at that time that the recording or its distribution violated any employer policies.

(6) On February 10, 2026, upper management first learned of the recording and transcript, and claimant’s distribution of them. The employer initiated an investigation into the matter.

(7) On February 16, 2026, the employer discharged claimant for having made and distributed the recording, particularly for having distributed it to a nonsupervisory employee. The employer had not previously disciplined claimant or suspected her of any policy violations.

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 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).

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).

ORS 165.540 provides, in relevant part:

(1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (8) of this section, a person may not:

* * *

(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.

* * *

* * *

(6) (a) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept or attempt to intercept oral communications that are part of any of the following proceedings, if the person uses an unconcealed recording device or if the communications occur through a video conferencing program:

* * *

(C) Private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made.

* * *

* * *

(9) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

* * *

The employer discharged claimant for having recorded a January 22, 2026 meeting with supervisors, then distributed the recording to others, including a non-supervisory employee. The employer had a written policy prohibiting the disclosure of confidential information “to any unauthorized person inside or outside the Company,” though the policy allowed for disclosure of information “for a business purpose.” Exhibit 2 at 22. The employer also had a written policy that provided: “You are prohibited from making your own audio recordings of any work place conferences or discussions without specific authorization from your manager.” Exhibit 2 at 20. Claimant acknowledged receipt of a copy of these policies at hire.

Claimant did not dispute that she made and distributed the recording as alleged. Claimant testified that she was not aware her actions would be viewed as violating the employer’s policies, as she believed capturing audio of the meeting was “necessary” to prove to upper management that her concerns about the maintenance supervisor were valid, and believed that confidentiality policies related to recording conversations were applicable only to conversations involving hotel guests. Transcript at 16. Claimant further testified that she believed she had valid a business purpose for distributing the recording and transcript to each recipient, including the non-supervisory employee, whom claimant believed should have knowledge of what transpired at the meeting due to the likelihood of his soon being promoted. Transcript at 20-21.

Regarding claimant making the recording, the employer’s reasonable written policy unambiguously prohibited any employee from making their own recording of workplace conferences or conversations without specific authorization from their superior, and claimant did precisely that. Claimant therefore should have known that her actions in that regard probably violated the policy, and acted with indifference to the consequences of her actions. Accordingly, claimant violated the recording policy with wanton negligence.

Regarding claimant’s subsequent distribution of the recording, including to a non-supervisory employee, claimant contended that because the employee was under consideration for a promotion he had a valid business purpose for having access to this information, a circumstance in which disclosure of otherwise confidential information was permitted under the employer’s policy. The employer disagreed that this employee had any reason to know what had transpired at a meeting of supervisory employees, and asserted that claimant’s distribution of the recording and transcript to him therefore violated their confidentiality policy. That claimant reasonably saw the existence of a valid business purpose justifying the employee’s access to the recording, where the employer did not, does not amount to a wantonly negligent violation of the policy. Claimant did not know or have reason to know that the employer would have a differing view on whether such a business purpose existed, and therefore that her actions would probably result in a violation of the employer’s expectations. Accordingly, claimant did not violate the confidentiality policy willfully or with wanton negligence.

Although claimant violated the recording policy with wanton negligence, isolated instances of poor judgment are not misconduct. The incident was isolated, as claimant had never before faced discipline from the employer, and it did not involve a breach of trust or otherwise make a continuing employment

relationship impossible. The remaining question is therefore whether claimant's actions exceeded mere poor judgment by constituting an act that violated the law or was tantamount to unlawful conduct.

ORS 165.540(1)(c) prohibits the recording of a conversation using an electronic device unless all parties to the conversation are informed. The employer asserted at hearing that the recording was made without the knowledge of the supervisors in attendance. Transcript at 5. Claimant did not directly address this assertion or give details about the recording process. It is therefore somewhat unclear whether the exception in ORS 165.540(6)(a)(C) applies, which provides that recording a private meeting is not unlawful if the recording device is "unconcealed" and the participants "reasonably should have known that the recording was being made." That claimant forwarded the recording and transcript to each of the participants two days after the meeting suggests that claimant had not intended that the fact the meeting was recorded be kept secret from the participants, and weighs in favor of the recording device having been unconcealed. Furthermore, that none of the meeting participants apparently voiced any objection to the employer about the meeting having been recorded after receiving the recording and transcript suggests that they may have been aware during the meeting that claimant was recording it. In weighing these factors and the potential applicability of the ORS 165.540(6)(a)(C) exception, evidence as to whether claimant's conduct violated the law or was tantamount to unlawful conduct is, at most, equally balanced. The employer has therefore not met their burden of showing by a preponderance of evidence that claimant's conduct exceeded mere poor judgment. Accordingly, claimant was discharged for an isolated instance of poor judgment, which is not misconduct.

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

DECISION: Order No. 26-UI-329785 is affirmed.

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

DATE of Service: June 25, 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.

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 الاستئناف 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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