

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0505

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 17, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective January 25, 2026 (decision # L0016590622).¹ Claimant filed a timely request for hearing. On May 5, 2026, ALJ Andersen conducted a hearing, and on May 8, 2026 issued Order No. 26-UI-329832, reversing decision # L0016590622 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On May 12, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision.

FINDINGS OF FACT: (1) Sherm's Thunderbird Market, Inc. employed claimant as a loss prevention lead at one of their stores from February 6, 2024 through January 27, 2026.

(2) The employer had written policies which prohibited, in relevant part, "Blatant misuse of company. . . or customer property which causes damage in any form"; "Conduct on or off duty that harms the business interest or reputation of the company"; and "[Sharing] confidential information regarding business partners, vendors, or customers." Transcript at 6-7. Claimant acknowledged receiving a copy of this policy at hire.

(3) Between February and December 2024, claimant took photos with her personal phone of between five and ten people in and around the store where she worked, without their knowledge, and shared them with her then-boyfriend. The people depicted in the photos did not work for the employer, and were not suspected of wrongdoing or photographed for reasons relating to claimant's work responsibilities. Claimant took and shared these photos either because the subjects were known personally to claimant or

¹ Decision # L0016590622 stated that claimant was denied benefits from January 25, 2026 to February 6, 2027. However, decision # L0016590622 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 25, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

her then-boyfriend, or because claimant found their appearance amusing or noteworthy. Claimant did not believe that taking or sharing these photos violated any employer policy.

(4) In December 2024, claimant got into an argument with her then-boyfriend during which he threatened to “sabotage [her] job.” Transcript at 16-17. Claimant discussed this with her then-supervisor, “J,” including the possibility that he may have been referring to the photos, and J said that claimant “hadn’t done anything wrong” regarding the photos, but advised her to stop sharing photos with the boyfriend or discussing work matters with him. Transcript at 17.

(5) By mid-2025, the relationship between claimant and her boyfriend had ended acrimoniously, and he thereafter harassed and threatened claimant, including at times while she was working. The threats largely involved trying to have the employer view claimant negatively so that she would be disciplined or discharged.

(6) On January 23, 2026, claimant spoke with the employer’s human resources (HR) manager by phone and told her that her ex-boyfriend had threatened to post to social media the photos that she had shared with him in 2024, and that she was concerned about the impact his doing so might have on her employment. The HR manager told claimant “not to worry about that yet,” and that an investigation into the matter would only be conducted if the employer received a formal complaint. Transcript at 7-8.

(7) At some time between January 23 and 26, 2026, claimant’s ex-boyfriend created a social media post containing four or five of the photos previously shared by claimant, suggesting in the post that claimant had been “stalking” the subjects of the photos in the store and that they should consider “shop[ping] somewhere else.” Transcript at 16. The post also urged readers to identify the people depicted in the photos so they could be encouraged to “complain [about claimant to the employer] too.” Transcript at 16. The employer thereafter received an online complaint, purportedly from a customer, regarding the post. Claimant later learned from a relative of the ex-boyfriend that the ex-boyfriend had “put the people up to” making the online complaint. Transcript at 22.

(8) On January 26, 2026, while the employer was investigating the complaint, claimant discussed the matter with her then-supervisor, “T.” T told claimant that he also shared photos “like that” with his partner, and placed the blame for the investigation on claimant’s ex-boyfriend, which claimant took as reaffirming that what she did “wasn’t that wrong.” Transcript at 21. Later that day, the employer decided to discharge claimant based on their finding that the online complaint was substantiated.

(9) On January 27, 2026, the employer notified claimant of her discharge and she did not work for them after that day.

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).

The employer discharged claimant based on a complaint they received regarding a social media post by claimant’s ex-boyfriend, which contained photos taken by claimant in and around her workplace. The employer asserted at hearing that claimant’s sharing of the photos and the ex-boyfriend’s subsequent social media post containing them caused “reputational damage” to the employer in violation of their “confidentiality policy and conduct standards.” Transcript at 6. Claimant reported to her then-supervisor in December 2024, and the HR manager on January 23, 2026, that she had taken the photos and shared them with her boyfriend. Neither of them indicated in response that they believed claimant had violated any policy, and they did not at that time initiate any disciplinary investigation into her admitted actions. It was only after claimant’s ex-boyfriend posted the photos publicly and orchestrated a complaint to be filed with the employer against her that the employer initiated disciplinary proceedings. As claimant had no control over her ex-boyfriend’s actions, neither his social media post nor any resulting “reputational damage” sustained by the employer can be considered willful or wantonly negligent policy violations attributable to claimant.

To the extent claimant’s own actions violated an employer expectation and were part of the proximate cause of her discharge, the employer did not show that the violation was willful or wantonly negligent. A written copy of the employer’s policies was not introduced into evidence, but the employer’s witness testified that the policies contained prohibitions on: “Blatant misuse of company. . . or customer property which causes damage in any form” and “[Sharing] confidential information regarding business partners, vendors, or customers.” Transcript at 6-7. Claimant testified that she understood these policies to have applied only to sensitive financial or identity information obtained for business purposes, and did not extend to taking photos of customers or others for reasons unrelated to her employment, which she believed the employer did not prohibit anyone, employee or customer, from doing in or around their stores. See Transcript at 18.

The wording of the policies is, at best, ambiguous as to whether they prohibit employees from taking photos in the store, unrelated to loss prevention duties, and sharing them privately with a partner. Moreover, that claimant’s supervisor at the time of her discharge admitted to engaging in the same conduct; claimant’s then-supervisor in December 2024 told claimant she “hadn’t done anything wrong” after claimant told her about having taken and shared the photos; and the HR manager told claimant in January 2026 “not to worry about that yet” in response to claimant telling her about having taken and shared the photos, suggests that the employer’s interpretation of their policies as prohibiting employees from taking and privately sharing photos of customers was also unknown to claimant’s immediate superiors until her discharge. As such, the employer has not shown that claimant knew or should have known that taking or sharing the photos with her then-boyfriend would probably result in a violation of the employer’s policies. Furthermore, that claimant did not take or share any photos after December 2024, when her then-supervisor advised her to stop doing so, suggests that claimant had not been acting with indifference to the consequences of her actions, and likely would have complied with any prohibition from the outset of her employment had she understood the employer’s expectation in that

regard. Accordingly, the employer has not shown that claimant acted willfully or with wanton negligence in taking or sharing the photos, and therefore her discharge was not for misconduct.

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

DECISION: Order No. 26-UI-329832 is affirmed.

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

DATE of Service: June 24, 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 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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