

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0507

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 18, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was suspended by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the suspension (decision # L0016629500). Also on March 18, 2026, 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 # L0016603660). The employer filed timely requests for hearing on both administrative decisions. On April 22 and May 6, 2026, ALJ Griffith conducted a hearing on both administrative decisions. On May 8, 2026, ALJ Griffith issued Order No. 26-UI-329783, reversing decision # L0016629500 by concluding that claimant was suspended for misconduct;¹ and Order No. 26-UI-329782, reversing decision # L0016603660 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective February 1, 2026.

On May 12, 2026, claimant filed applications for review of Orders No. 26-UI-329783 and 26-UI-329782 with the Employment Appeals Board (EAB). EAB combined its review of the orders under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2026-EAB-0507 and 2026-EAB-0506).

WRITTEN ARGUMENT: Claimant filed written arguments on May 12 and 22, 2026. EAB did not consider claimant's May 12, 2026 written argument because he did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, both arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB

¹ While Order No. 26-UI-329783 concluded that claimant was suspended for misconduct, it did not distinguish between the suspension and later discharge for purposes of the effective date of disqualification. Order No. 26-UI-329783 at 2, 5.

considered only information received into evidence at the hearing. EAB considered any parts of claimant's May 22, 2026 argument that were based on the hearing record.

FINDINGS OF FACT: (1) Douglas County Council on Adapt employed claimant as a certified recovery mentor from January 24, 2024 through February 3, 2026. As a certified recovery mentor, claimant was responsible for working directly with clients who were recovering from substance abuse issues by, for example, building relationships with clients, connecting clients with resources that aid with recovery, and modeling a healthy lifestyle for clients.

(2) The employer maintained various written policies that governed how employees should interact with clients. These included that employees were prohibited from "transporting clients in a personal vehicle"; that employees should "consider the inherent risks and benefits associated with moving the boundaries of a counseling relationship beyond the standard parameters [and that] [c]onsultation and supervision shall be sought and documented"; that employees should "make every effort to avoid multiple [or dual] relationships" with clients, defining such relationships to include "members of the [employee's] immediate or extended family, business associates of the [employee], or individuals who have a close personal relationship with [the employee or their family]"; that employees should "seek consultation" with a supervisor before accepting a client with whom they have had a prior relationship; and that employees should not engage in "dishonesty, fraud, or deceit." Exhibit 1 at 5, 15, 16, 20. The employer's policies likewise required claimant to adhere to the policies of the Mental Health & Addiction Certification Board of Oregon (MHACBO), the body which granted claimant his certification as a certified recovery mentor. The employer provided claimant with copies of these policies when he was hired, and claimant broadly understood them. The employer also expected employees not to give their personal phone numbers to clients, although giving clients their work phone numbers was permitted; and, when necessary, to contact emergency services when dealing with a client in crisis.

(3) In or around February 2025, claimant was working at community outreach event in which the employer was participating. At the event, claimant met an attendee whom, after some discussion and a confirmation of her last name, claimant realized was the adult daughter of a man he had known while claimant was in prison. Claimant had not met the daughter previously and had no pre-existing relationship with her. The woman subsequently became claimant's client. Claimant did not disclose to the employer that he had known the client's father. After she became claimant's client, claimant gave her his personal phone number. He did so because the employer expected him to turn his work phone off after 5 p.m., and he wished to be reachable in case the client was in a crisis situation. Claimant did not engage in any sort of personal relationship with the client.

(4) On January 14, 2026 around 7:00 p.m., the client contacted claimant on his personal phone because she was upset after having a fight with her boyfriend. The client also threatened to harm or kill herself, alleging that her parents, whom claimant knew to be deceased, had told her to do so. Claimant responded by immediately driving his personal truck to the client's apartment complex, approximately 10 minutes away from his home, to meet with her in person. Claimant did not contact emergency services, because he was concerned that they would not respond as quickly as he could, and believed, based on his training, that he could handle the situation appropriately by himself.

(5) When the client came outside to meet claimant, she got into his truck, and claimant then drove her across the street to the parking lot of a dollar store. Remaining in the truck with her, claimant allowed

the client to “de-escalate” herself by crying and screaming. April 22, 2026 Transcript at 34. Once the client had calmed down, claimant brought her home. Claimant spent approximately 15 minutes with the client that evening.

(6) On January 15, 2026, the employer received a report from a community member, indicating that claimant had picked the client up from her home the previous evening and driven her off-site. On or around January 16, 2026, the employer began an investigation into the matter.

(7) On January 23, 2026, the employer spoke to claimant about his alleged conduct on January 14, 2026. During that discussion, the employer asked claimant if he had picked up the client and taken her to his own home. Claimant was “shock[ed]” that the employer would allege that he had taken the client to his home, as he had not done so. April 22, 2026 Transcript at 33. Claimant therefore denied that he had picked up the client and taken her to his home. April 22, 2026 Transcript at 33. The employer then placed claimant on paid administrative leave pending further investigation into the matter. Claimant remained on administrative leave until the end of his employment.

(8) The employer subsequently obtained security camera footage from the client’s apartment complex. The footage showed that claimant had arrived at the complex at approximately 7:32 p.m. on January 14, 2026, where he waited for approximately 12 minutes, that the client then exited her building and got into claimant’s truck, and that the two then drove off. The footage did not show anything else. On January 30, 2026, the employer again discussed the allegations with claimant and disclosed to him what they had seen in the security footage. Claimant admitted to the employer that he had picked up the client from her home and brought her elsewhere.

(9) On February 3, 2026, the employer discharged claimant because of his conduct on January 14, 2026, in which he had transported his client in his personal vehicle, and his “failure to disclose a dual relationship with [the] client.” Exhibit 2 at 3.

(10) The employer had never previously disciplined claimant for any policy violations.

CONCLUSIONS AND REASONS: Claimant was not suspended or discharged not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer suspended or 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 and good faith errors are not misconduct. OAR 471-030-0038(3)(b).

The orders under review concluded that claimant was suspended and discharged for misconduct. Orders No. 26-UI-329783 and 26-UI-329782 at 2. The orders under review did not distinguish between the suspension and later discharge, however, and conducted no separate analysis to determine whether the record supported disqualification based on both. This was error. The record shows that claimant was placed on administrative leave—i.e., suspended—on January 23, 2026, pending further investigation into his alleged conduct on January 14, 2026. Thus, the employer had not yet determined the validity of the allegations against claimant when they suspended him, and the suspension therefore was for investigative, rather than disciplinary, purposes. Because claimant was suspended for *allegations* of policy violations and not actual policy violations, the proximate cause of the suspension was not a willful or wantonly negligent violation of the employer’s expectations. Claimant therefore was not suspended for misconduct.

The record also shows that claimant was not discharged for misconduct. The record contains allegations of multiple violations of the employer’s expectations, including: claimant’s furnishing of his private phone number to the client; claimant’s transportation of the client in his personal vehicle; claimant’s failure to contact emergency services; claimant’s having engaged in a “dual relationship” with the client; and, arguably, claimant’s initial failure to disclose that he had transported the client in his private vehicle. Of these, however, the discharge letter that the employer issued to claimant lists only the transportation of the client in his personal vehicle and the “maintenance and failure to disclose a dual relationship with a client” as the reason for claimant’s discharge. Exhibit 2 at 3. Similarly, the employer’s witness testified at hearing that the final incident which led to claimant’s discharge was claimant’s conduct on January 14, 2026. April 22, 2026 Transcript at 6.

Thus, it is reasonable to conclude that the proximate causes of claimant’s discharge were his conduct on January 14, 2026 and the “dual relationship” that claimant allegedly engaged in but failed to disclose to the employer. As such, unless the record shows that these were willful or wantonly negligent violations of the employer’s standards of behavior, it is not necessary to examine claimant’s furnishing of his private phone number to the client or his initial failure to disclose that he had transported the client in his vehicle, such as to determine whether the proximate causes of the discharge were isolated instances of poor judgment.²

First, regarding the allegation that claimant had engaged in a “dual relationship” with the client, the employer did not meet their burden to show that claimant violated this policy. The policy defined “dual relationships” as “members of the [employee’s] immediate or extended family, business associates of the [employee], or individuals who have a close personal relationship with [the employee or their family].” Claimant’s connection with the client does not meet that definition. The client was not a member of claimant’s family or a business associate and did not have a close personal relationship with claimant or his family. Rather, claimant was acquainted with a member of the *client’s* family and had not been acquainted with the client herself until he met her in a professional context. Claimant did not maintain a personal relationship with the client. As such, he was not engaged in a dual relationship with the client and did not violate that policy. Similarly, because claimant did not already have an existing relationship with the client, he did not violate the employer’s existing-relationship policy.

² 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).

Regarding claimant's decision to transport the client in his truck, the record unambiguously shows that this was a violation of the employer's policy, which prohibits "transporting clients in a personal vehicle." At hearing, claimant's testimony suggested that he did not fully understand the policy, apparently because the employer's policy permitted employees to use private vehicles for work-related purposes other than transporting clients.³ Regardless, because claimant had been given a copy of the policy, he at least had reason to know that he was not permitted to transport clients in his private vehicle. However, under the circumstances, claimant's mistake was, at worst, a good faith error.

A "good faith error" logically involves some sort of mistake made with the honest belief that one is acting rightly. *See Webster's Third New Int'l Dictionary* 978 (Unabridged ed. 2002) (defining "good faith" as "a state of mind indicating honesty and lawfulness of purpose : belief in one's legal title or right: belief that one's conduct is not unconscionable or that known circumstances do not require further investigation : absence of fraud, deceit, collusion, or gross negligence").

Claimant testified at hearing that he transported the client in his truck because the client was experiencing a crisis, and claimant therefore decided to "just go and deal with the situation" rather than wait for emergency services to respond. April 22, 2026 Transcript at 40–41. Given the exigency of the circumstances—the client was threatening self-harm and appeared to be harboring delusions relating to her late parents—claimant had reason to believe that immediate action was required. Further, as claimant had already established a professional relationship with the client and therefore presumably knew her well, it can reasonably be inferred that claimant had reason to believe that responding to her immediately and directly as he did was the safest course of action. As such, claimant's decision to transport the client in his truck so she could "de-escalate" was, at worst, a good faith error.

Regarding claimant's decision not to contact emergency services, the employer failed to meet their burden to show that claimant either knew or should have known that they expected him to contact emergency services in such situations. While it is clear that the employer *expected* this of claimant, a policy memorializing this expectation is not in the record, and neither party testified that claimant had been informed of or otherwise knew of this expectation. As such, claimant's decision to exercise discretion and not call emergency services was not a willful or wantonly negligent violation of the employer's expectation that he do so. However, even if claimant did understand the employer's expectations, his decision not to contact emergency services was, at worst, a good faith error because he had reason to believe that he could handle the situation by himself, and with greater expedience.

For the above reasons, claimant was suspended, but not for misconduct, and is not disqualified from receiving benefits based on the suspension. Further, because the proximate causes of claimant's discharge did not constitute willful or wantonly negligent violations of the employer's expectations, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the discharge.

DECISION: Orders No. 26-UI-329783 and 26-UI-329782 are set aside, as outlined above.

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

³ *See* April 22, 2026 Transcript at 40–41.

DATE of Service: June 25, 2026

NOTE: This decision reverses the ALJ's orders denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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 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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