

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0511

Reversed & Remanded

PROCEDURAL HISTORY: On April 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for committing a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy, and that claimant was therefore disqualified from receiving benefits effective February 15, 2026 (decision # L0016944450).¹ Claimant filed a timely request for hearing. On April 29, 2026, ALJ Murray conducted a hearing in which the work separation was adjudicated as though it was an ordinary discharge under ORS 657.176(2)(a). On April 30, 2026, ALJ Murray issued Order No. 26-UI-328832, concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the discharge. On May 13, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of excerpts of the administrative decision and notice of hearing in this matter, which have respectively been marked as EAB Exhibit 1 and EAB Exhibit 2, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibits will remain in the record.

WRITTEN ARGUMENT: The employer's 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. 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 argument that were based on the hearing record.

¹ Decision # L0016944450 stated that claimant was denied benefits from February 15, 2026 to July 25, 2026. However, decision # L0016944450 should have stated that claimant was disqualified from receiving benefits beginning February 15, 2026 and until he earned four times his weekly benefit amount. See ORS 657.176.

The parties may offer new information, such as the documents attached to the employer's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) HP Civil, Inc. employed claimant as a carpenter and laborer from August 11, 2025 until February 17, 2026.

(2) During a training on December 19, 2025, the employer announced that employees would undergo drug testing. After making the announcement, claimant engaged in behavior the employer considered to be suspicious. Claimant eventually submitted to a drug test that day, which returned a result that was negative for prohibited substances.

(3) Because the employer considered claimant's behavior on December 19, 2025 suspicious, they decided to require claimant to submit to another drug test.

(4) On February 17, 2026, the employer required claimant to submit to a urine analysis drug test to be conducted at a drug-testing facility. Claimant went to the facility and provided a sample, with the door of the room he was in open and an observer present in the other room. The sample he provided was of an unusually low temperature and was immediately deemed invalid by the facility.

(5) On February 17, 2026, the employer discharged claimant for providing the invalid drug test sample, which they believed claimant had falsified or adulterated.

CONCLUSIONS AND REASONS: Order No. 26-UI-328832 is reversed and this matter remanded for further development of the record.

ORS 657.176(2)(h) requires a disqualification from unemployment insurance benefits if the individual has committed a disqualifying act as described in ORS 657.176(8) or (9). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

* * *

(C) Refuses to cooperate with or subverts or attempts to subvert a drug, cannabis or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:

* * *

(v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen[.]

OAR 471-030-0125(3) (January 11, 2018) provides that for purposes of ORS 657.176(9), (10), and 657.176(13),² a written employer policy is reasonable if:

- (a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and
- (b) The policy does not require the employee to pay for any portion of the test; and
- (c) The policy has been published and communicated to the individual or provided to the individual in writing; and
- (d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:
 - (A) Probable cause for requiring the individual to submit to the test; or
 - (B) The policy provides for random, blanket or periodic testing.

* * *

No employer policy is reasonable if the employer does not follow the policy. OAR 471-030-0125(6). Testing for drugs, cannabis, or alcohol must be conducted in accordance with ORS 438.435. OAR 471-030-0125(10)(a). If the employer discharges or suspends an employee because of use, sale, or possession of drugs, cannabis, or alcohol in the workplace and the employer has no written policy regarding the use, sale, or possession of drugs, cannabis, or alcohol in the workplace, the provisions of OAR 471-030-0038 apply. OAR 471-030-0125(11).

The order under review analyzed claimant's work separation under ORS 657.176(2)(a), which provides for disqualification from benefits if a claimant is discharged for misconduct connected with work. Order No. 26-UI-328832 at 2-4. The order under review erred in analyzing the separation under that section, rather than ORS 657.176(2)(h) and (8). The work separation must be analyzed to assess whether claimant was discharged for committing a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy by subverting or attempting to subvert a drug testing process in an employment-related test required by the employer's reasonable written policy. The matter is therefore remanded for the Office of Administrative Hearings (OAH) to serve notice on the parties of that issue, and for the ALJ to develop the record to assess the issue and render an order on it.

Review of the administrative decision in this matter shows that the Department premised claimant's disqualification from benefits on the assertion that he committed a disqualifying act under ORS 657.176(2)(h) and (8) by falsifying a drug test. This is the case because the decision cites to ORS 657.176 and states, "[Y]ou were fired because [y]ou provided invalid urine samples during a drug test. This was a disqualifying act because you falsified the drug test and this is disqualifying." EAB Exhibit 1 at 1. The decision then references ORS 657.176(2)(h) by stating, "Based on this information, we have decided that you committed a disqualifying act. This disqualifies you from receiving benefits." EAB

² The citations in this rule to ORS 657.176(9), (10), and (13) have not yet been updated to account for recent legislative changes that renumbered certain paragraphs under ORS 657.176. Therefore, any reference under the rule to ORS 657.176(9), (10), or (13) should be read as ORS 657.176(8), (9), or (12), respectively.

Exhibit 1 at 1. The decision goes on to cite administrative rules, OAR 471-030-0125 and OAR 471-030-0126, that only apply in the context of the Department's drug, cannabis, and alcohol adjudication policy. *See* EAB Exhibit 1 at 1. Accordingly, the Department viewed claimant's work separation as a disqualifying act under ORS 657.176(2)(h), rather than an ordinary discharge for misconduct connected with work per ORS 657.176(2)(a).

Although the Department premised claimant's disqualification from benefits on the assertion that he committed a disqualifying act per ORS 657.176(2)(h), the notice of hearing in this matter listed the issue to be decided as whether claimant was disqualified from receipt of benefits due to a "separation, discharge, suspension, or voluntary leaving from work" and did not give notice that the issue at hand was whether claimant committed a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy. *See* EAB Exhibit 2 at 1. It is therefore appropriate to remand for a hearing where the issue to be decided is whether claimant is subject to disqualification from benefits under the provisions of ORS 657.176(2)(h) and (8).

On remand, The ALJ should confirm that the employer had a written policy that prohibited the use, sale, possession, and effects of drugs, cannabis or alcohol in the workplace.³ If so, the ALJ should inquire whether such a written policy was provided to claimant in writing, or otherwise was published and communicated to claimant. The ALJ should also ask whether the policy required employees to pay for the required testing, whether the employer followed their own policy, and whether the policy called for drug testing that was random or based on probable cause. The ALJ should develop the record to assess whether the invalid drug test sample claimant submitted was a subversion or an attempted subversion of an employment-related test required by the employer's reasonable written policy. To this end, the ALJ should inquire whether claimant interfered with the accuracy of the results of the test on the sample deemed invalid by, for example, diluting or adulterating the test specimen he submitted, submitting an old sample of urine that had cooled to low temperature (either someone else's or his own, with the hope or expectation that the old urine would return a clean result), or submitting a sample of some other substance at low temperature (such as a sample of false urine intended to return a clean result). The ALJ should ask the employer whether they believed they had probable cause to test claimant on February 17, 2026, and if so, what their probable cause basis was. The ALJ should also inquire whether the employer's testing for drugs was conducted in accordance with ORS 438.435.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant is subject to disqualification from benefits under the provisions of the Department's drug, cannabis, and alcohol adjudication policy, Order No. 26-UI-328832 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-328832 is set aside, and this matter remanded for further proceedings consistent with this order.

³ If the record on remand shows that the employer did not have such a written policy, the ALJ should proceed under the ordinary misconduct analysis. *See* OAR 471-030-0125(11).

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

DATE of Service: June 24, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-328832 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.