

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0516

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 16, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective December 21, 2025 (decision # L0016396343).¹ Claimant filed a timely request for hearing. On April 30, 2026, ALJ Laurie-Gardiner conducted a hearing, and on May 4, 2026 issued Order No. 26-UI-329209, reversing decision # L0016396343 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On May 19, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Primeflight Aviation Services, Inc. employed claimant as a freight agent from August 25, 2025 through December 21, 2025.

(2) The employer maintained policies which prohibited, in relevant part, “sexual and other harassment”; “[d]irect threats of intent to inflict harm or threatening behavior”; “[p]hysical attacks, including hitting and shoving”; “[o]bscene or abusive language and or malicious language while on the job, mistreatment or abuse of fellow employees, and threatening, intimidating, or coercing an employee.” Transcript at 11. These policies were contained in the employer’s handbook, which claimant received and reviewed at the time of hire.

(3) Claimant suffered from post-traumatic stress disorder (PTSD). Claimant’s PTSD symptoms were triggered by aggressive behavior such as being yelled at. Claimant informed the employer of this fact and requested that he not be yelled at.

¹ Decision # L0016396343 stated that claimant was denied benefits from December 21, 2025 to January 16, 2027. However, decision # L0016396343 should have stated that claimant was disqualified from receiving benefits beginning December 21, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

(4) On the evening of December 19, 2025, claimant was working an overnight shift that was scheduled to end on the morning of December 20, 2025. After working for approximately two and a half hours, “J,” a manager, approached claimant and told him he should take his first break of the shift. Claimant set off to take his break along with a coworker. As they were walking, a supervisor, “M,” approached claimant and questioned why claimant was taking a break at that time. Claimant told M that J had instructed him to do so, to which M replied that J did not have that authority. Claimant insisted that he was going to take his break, as he believed he was legally entitled to it and J had told him to do so. M was offended at claimant’s assertion, and the two continued to argue over the matter. During the argument, claimant raised his voice, as he felt that M was antagonizing him, but did not use foul language.

(5) When M eventually walked away from claimant, he stated as he was leaving, “You’re 40 years old. I don’t know why the fuck you’re even fucking here at this warehouse.” Transcript at 20. Claimant then approached M and asked, “What did you say to me?” Transcript at 20. In response, M contacted another supervisor, “AJ,” on his radio to request backup. AJ arrived and stretched his arms out to try to block claimant from M. Claimant “incidental[ly]” made physical contact with AJ as claimant continued to approach M in an attempt to get M to repeat his previous comment. Transcript at 21. Shortly thereafter, “A,” the head manager of claimant’s crew, arrived at the scene and attempted to de-escalate the situation. At that point, claimant “felt attacked,” felt like he was unfairly being made out to appear violent, and was having difficulty calming down due to his PTSD symptoms. Transcript at 21. However, claimant had not engaged in any violence or threats thereof, nor had he made any intentional physical contact with any of the other employees. A ultimately sent claimant home early, ending the conflict.

(6) The employer took statements regarding the incident from claimant, the coworker he had been walking with, M, and AJ. M’s statement read:

[Claimant] was reported to be taking an unsanctioned break. I went out to the smoking area where he was asked to [*sic*] why. As soon as I asked why he was on break, he rolled his eyes and took a deep breath. He started talking about how many [containers used for shipping freight]... he had done and how he deserved a break. I told him that next time, I wanted him to notify a supervisor before taking a break. He got upset and started bringing up work laws and topics like calling OSHA. I told them that during times that freight is heavy on the floor, everyone is needed, even me. He then responded by saying, ‘[Y]ou don’t need breaks, you don’t do shit.’ I told him, ‘[Y]ou don’t know what I do around here, obviously.’ He started yelling at me for raising my voice. I insisted, I was trying to level out and find a middle ground. He told me, ‘[N]o, you’re not. You just want to come out and show your dominance. You are not my master.’ I told him at this point he was being too much and to clock out. I started to walk away, and I heard, ‘[W]e’re not done talking, pussy. Come back, you faggot ass bitch. You think you’re tough?’ I kept walking up to the ramp, and my fellow supervisor, AJ... came out to get between us. [Claimant] pushed him. I went around on the stairs calling for management to come. [A]... came out and told me to go outside[.]

Transcript at 8–9. AJ’s statement read:

So upon walking outside, I saw an altercation between [M] and [claimant] exchanging words, then [M] yelled out, ‘[Y]ou work at a warehouse, just go home.’ And [claimant] yelling out, then

charged towards [M]. I tried stopping him, then got shoved to the side. Then I ran to him, attempted to stop him again. Then he yelled out to [M], 'I'm going to kill you.' Then I said, '[C]alm down. It's not worth it.' Then I kept him away from [M] till management came[.]

Transcript at 9–10.

(7) On December 21, 2025, the employer discharged claimant due to his conduct during the incident of December 19 through 20, 2025, which they believed violated the above-mentioned policies, and because they felt that he was a “security threat to personnel at the facility[.]” Transcript at 6. Prior to that incident, claimant had never been the subject of any disciplinary concerns.

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).

The employer discharged claimant due to his conduct during the incident of December 19 through 20, 2025, as they believed the conduct violated their policies prohibiting harassment, threats of harm and physical attacks, obscene or abusive language, and similar; and because they felt he was a “security threat.” As a preliminary matter, the parties offered differing accounts of the final incident that led to claimant’s discharge. The employer asserted at hearing that claimant acted as indicated in the statements that M and AJ had given, including that he used foul language and pushed a supervisor out of the way. Transcript at 5–7. By contrast, claimant asserted that he did not use foul language, issue threats, or intentionally physically contact anyone during the incident. Transcript at 18, 21. The employer’s witness, who worked for their human resources (HR) department, was not present for the incident, and

none of the other employees who were party to the incident testified at hearing.² Thus, the employer's evidence regarding the incident is hearsay, which is entitled to less weight than first-hand testimony.

Because the employer's hearsay account is entitled to less weight than claimant's first-hand account, the record, on balance, does not show by a preponderance of the evidence that claimant used foul language, engaged in violent behavior or otherwise intentionally physically contacted anyone, or issued threats of violence during the incident. The facts, where in dispute, therefore have been found in accordance with claimant's account.

Even construing the facts in claimant's favor, however, claimant violated the employer's policy willfully or with wanton negligence. Those policies prohibited, in relevant part, "shoving," "mistreatment... of fellow employees," and "intimidating... an employee." At minimum, the record suggests that claimant shoved or otherwise walked into AJ during the incident, even if accidentally, while pursuing M. Claimant pursued M in an attempt to confront him over the comment about claimant's age. Thus, claimant's conduct arguably constituted mistreatment of AJ and, further, was likely perceived as intimidating. Claimant had no reasonable basis for continuing the conflict. Rather, he appears to have pursued it because he felt aggrieved by the comment about his age. Claimant also knew, or had reason to know, that the above policies prohibited his conduct. As such, claimant's conduct here violated the above policies willfully or at least with wanton negligence.

However, claimant's conduct was an isolated instance of poor judgment. Claimant had no previous disciplinary record, and his conduct during the final incident was therefore isolated. Further, claimant's conduct during the final incident did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible, as it was not likely to recur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty.

The record shows, based on claimant's conduct, that the employer deemed him a "security threat," suggesting that they believed they could not continue the employment relationship for fear that he could become violent. However, the determination of whether conduct exceeds mere poor judgment is an objective test, and requires finding that a reasonable employer would conclude that the employee's conduct made a continued employment relationship impossible. *See Isayeva v. Employment Dept.*, 266 Or App 806, 340 P3d 82 (2014). Further, *Double K Kleaning Service, Inc. v. Employment Dept.*, 191 Or App 374, 379, 82 P3d 642 (2004) held that, in determining whether conduct exceeds mere poor judgment, mitigating circumstances include remorse, the relative mildness of the profanity used, the lack of intent to harass or annoy, and an exemplary work history, while aggravating factors include anger that is disproportional to the provocation, verbal threats of physical harm, persistence in pursuing the argument beyond a brief period, obscenity or vulgarity that is not "mild," and repeated use of insulting vulgarity after an explicit warning to stop.

² Further, while the employer's witness testified that he had reviewed security footage of the incident, the footage did not include audio. Transcript at 29. As such, the employer's witness could not have heard what claimant said during the incident. The video itself was not offered into evidence.

Here, the severity of claimant's conduct was aggravated by his persistence in pursuing the conflict, rather than walking away from it. It was mitigated, however, by his PTSD diagnosis, which seemingly affected claimant's ability to let go of conflict, and the fact that he did not use foul language. Further, despite the employer's assessment of claimant as a "security threat," the employer did not meet their burden to show that claimant would have been likely to engage in violence had he either been permitted to pursue the conflict further or to continue working for the employer overall. As such, the record on balance does not show that a reasonable employer would have concluded that claimant's conduct made a continuing relationship impossible. Therefore, claimant's conduct was an isolated instance of poor judgment, and not misconduct.

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

DECISION: Order No. 26-UI-329209 is affirmed.

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

DATE of Service: July 1, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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