

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0518

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 25, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the work separation (decision # L0016762856). The employer filed a timely request for hearing. On April 23, 2026, ALJ Wahl conducted a hearing, and on April 30, 2026, issued Order No. 26-UI-328874, reversing decision # L0016762856 by concluding that claimant was discharged for misconduct and therefore was disqualified from receiving benefits effective March 1, 2026. On May 19, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant 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). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant'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).

FINDINGS OF FACT: (1) Jerry's Pizza LLC employed claimant as a bartender at their drinking establishment from May 1, 2024 until March 4, 2026.

(2) The employer's workplace conduct expectations for their bartenders were generally not conveyed to them in writing. There had been instances of some of the employer's bartenders drinking alcohol on the job prior to January 2026. In January 2026, the employer's owner notified their bartenders by text message that this conduct was prohibited. The employer's bartenders were also generally prohibited from drinking alcohol while working under the rules of the state agency that regulated drinking establishments.

(3) Based largely on reports from other employees, the owner came to believe that claimant engaged in a number of inappropriate behaviors beginning in the fall of 2025 and continuing into January 2026. These included being frequently late for work, kissing his girlfriend in the kitchen area of the bar,

allegedly making sexual comments to a coworker about her Halloween costume, allegedly shaming a bar patron who had declined to take a shot of liquor, and allegedly making comments to a bar patron about that individual's genitals.

(4) In mid to late January 2026, the owner came to believe, based on a complaint from another employee, that claimant had been observed drinking alcohol on the job and had then acted aggressively toward that employee while the employee was on a break from work. The employee who made the report told the owner that she would not work with claimant ever again. The owner viewed claimant's alleged conduct on this occasion as the "final straw" that warranted discharge. Transcript at 8.

(5) Thereafter, on January 29, 2026, claimant was assigned to work a shift at the bar alone. Claimant worked that shift.

(6) On February 4, 2026, the owner left a voicemail for claimant advising that he was taking claimant off the work schedule for a while, but was open to claimant working again at some point in the future.

(7) In mid to late February or the beginning of March 2026, after having not been scheduled to work since January 29, 2026, claimant went to the employer's bar and approached the owner. Claimant mentioned that he intended to apply for unemployment insurance benefits and the two began to argue. Claimant then left a set of keys to the bar that the employer had given him, and departed. Claimant did not work for the employer again.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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 order under review concluded that claimant was discharged for misconduct. Order No. 26-UI-328874 at 3-4. The record does not support this conclusion.

The employer failed to meet their burden to prove that they discharged claimant for misconduct. As an initial matter, although the employer alleged claimant to have engaged in a number of inappropriate behaviors during his employment, the focus of the discharge analysis is on the proximate cause of the discharge, that is, the incident or alleged violation of policy that caused the discharge to occur when it did. *See e.g. Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision 09-AB-1767*, June 29, 2009 (discharge analysis focuses on

proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

Here, more likely than not, the proximate cause of claimant's discharge was the occasion in mid to late January 2026, when the owner came to believe, based on a complaint from another employee, that claimant had been observed drinking alcohol on the job and had then acted aggressively toward the employee while that employee was on a break from work. This is so because, at hearing, the owner testified that claimant's alleged conduct on that occasion was the "final straw" and the last thing that happened that caused the employer to discharge claimant. Transcript at 6, 8. The discharge then most likely occurred on February 4, 2026, when the owner left claimant a voicemail stating that he was taking claimant off the work schedule for a while but was open to claimant working again at some point in the future. Although claimant and the owner thereafter had an argument during which claimant left behind his set of keys to the bar, that event occurred after the work separation had already happened.

Weighing the record evidence, the employer did not prove by a preponderance of the evidence that claimant drank alcohol and acted aggressively toward the employee on the occasion in question. The owner testified that he learned of the alleged conduct after receiving a phone call from the employee toward whom claimant had allegedly been aggressive. Transcript at 8, 42. Although the employer had a separate employee testify at hearing, that witness did not offer testimony regarding the final incident, but instead testified to an occasion in which claimant allegedly made inappropriate comments about a Halloween costume the witness had been wearing, and an occasion in which claimant allegedly shamed a customer for not taking a shot of liquor. Transcript at 31-41. The owner offered documentary evidence into the hearing record, but none of those materials shed any light on the final incident. *See Exhibit 1 at 1-12.* For his part, claimant denied drinking alcohol at work or addressing the employee in an aggressive manner. Transcript at 17-18.

Accordingly, the evidence is no more than equally balanced as to whether claimant acted as alleged during the final incident leading to his discharge. Therefore, the employer did not prove by a preponderance of the evidence that the proximate cause of claimant's discharge was a willful or wantonly negligent violation of their expectations. This decision need not address the other instances of inappropriate conduct claimant was alleged to have engaged in during his employment, as those prior acts would only be relevant to assess whether claimant's conduct during the final incident was an isolated instance of poor judgment, and the isolated instance of poor judgment exception is not reached in this case since the employer failed to prove that the proximate cause of claimant's discharge was a willful or wantonly negligent violation of their expectations.

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

DECISION: Order No. 26-UI-328874 is set aside, as outlined above.

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

DATE of Service: June 30, 2026

NOTE: This decision reverses the ALJ's order 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

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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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