

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0523

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 18, 2026, the Oregon Employment Department (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 # L0016630268). The employer filed a timely request for hearing. On May 14, 2026, ALJ Murray conducted a hearing and issued Order No. 26-UI-330318, affirming decision # L0016630268. On May 20, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

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.

FINDINGS OF FACT: (1) Patriot Acquisitions, LLC employed claimant as a mechanical assembler from October 15, 2024 through February 4, 2026.

(2) The employer had written attendance policies that required employees to begin work as scheduled and notify the employer at least 30 minutes in advance of their shift if they would be late, and to remain at work through the end of their shift unless excused. Claimant understood these policies.

(3) In January 2026, the employer issued claimant two warnings. One warning involved claimant's use of a personal phone during work hours, and the other involved claimant leaving work early due to illness.

(4) At some time prior to February 3, 2026, claimant told his supervisor that he would need to leave work 30 minutes prior to the scheduled end of his shift on February 3, 2026 to attend an appointment. The supervisor approved the request and told claimant that because the computerized attendance system only allowed requests for time off to be made in one-hour increments, he did not need to take further

action regarding the request. Claimant was projected to have 30 minutes of accrued paid leave to cover the absence at the time the request was made.

(5) On February 3, 2026, claimant was scheduled to work from 5:30 a.m. to 4:00 p.m., not accounting for the preapproval to leave work 30 minutes early. That morning, claimant realized while leaving for work that he had misplaced his keys. Due to the time it took to locate his keys, claimant arrived at work at 6:17 a.m. Claimant did not notify the employer before 5:00 a.m. that he would be late for his shift. The employer applied claimant's accrued leave balance to this 47-minute absence, leaving him without any leave to cover his absence from leaving early later in the day. Nonetheless, claimant left work at 3:30 p.m. to attend his appointment as previously planned, without objection from the employer. Later that day, the employer decided to discharge claimant for having been late to work and having left before the scheduled end of his shift.

(6) On February 4, 2026, the employer discharged claimant. In a written document provided to him, the employer cited claimant having both arrived at work late and left early on February 3, 2026.

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 for having arrived at work late and left early on February 3, 2026. Although the employer asserted that prior alleged policy violations factored into the decision to discharge claimant rather than impose lesser discipline, the initial focus of the misconduct analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009; *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). Therefore, the events of February 3, 2026 are the initial focus of the analysis.

The employer reasonably expected their employees to begin work as scheduled and notify the employer at least 30 minutes in advance of their shift if they will be late, and to remain at work through the end of their shift unless excused. Claimant understood these policies. Claimant did not dispute that he was scheduled to work from 5:30 a.m. to 4:00 p.m. on February 3, 2026, but actually worked from 6:17 a.m. to 3:30 p.m.

Regarding the tardiness, claimant asserted at hearing that he arrived at work late because he had misplaced his keys. The employer's witness testified that claimant had given the same explanation to the employer, and that claimant had failed to notify the employer by 5:00 a.m. that he would be late for work. Transcript at 7. Claimant's inability to arrive at work on time due to misplacing his keys was a matter of ordinary, rather than wanton, negligence. It can reasonably be inferred that claimant had not realized by 5:00 a.m. that his keys were misplaced and therefore that he would be late for work. Claimant's failure to notify the employer by that time that he would be late for work was therefore not the result of wanton negligence. The record is unclear as to whether claimant notified the employer of his tardiness later that morning after discovering that he would be late, and therefore the employer has not met their burden of showing by a preponderance of the evidence that claimant willfully or with wanton negligence violated their notice policy. Therefore, as to claimant's tardiness on this occasion, the employer has not shown it to be a willful or wantonly negligent policy violation.

Regarding claimant leaving work 30 minutes prior to the scheduled end of his shift, claimant testified that he had previously obtained permission from his supervisor to do so. Transcript at 18. Claimant further explained why the employer's records might not contain a notation of his request for that time off, in that such requests could only be made in one-hour increments, and his supervisor therefore told him that a formal request was unnecessary. Transcript at 22. The employer failed to rebut claimant's testimony on these points. Furthermore, even if claimant had exhausted his accrued leave through his unexpected tardiness that morning, such that he did not have a balance of at least 30 minutes to use that afternoon, the record does not suggest that claimant's supervisor informed claimant of this or attempted to revoke the previously-given permission to leave early. As such, the employer has not shown by a preponderance of the evidence that claimant had not been excused from work early, and therefore failed to show that claimant violated the policy in that regard. Accordingly, because the proximate cause of claimant's discharge was not shown to be a willful or wantonly negligent policy violation, claimant's discharge was not for misconduct.

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

DECISION: Order No. 26-UI-330318 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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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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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