

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0544

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 20, 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 February 22, 2026 (decision # L0017135440).^{1 2} Claimant filed a timely request for hearing. On May 8, 2026, ALJ Murray conducted a hearing, and on May 12, 2026 issued Order No. 26-UI-330038, affirming decision # L0017135440. On May 26, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's 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).

FINDINGS OF FACT: (1) Cintas Corporation No. 3 employed claimant, most recently as a service sales representative, from October 9, 2020 through February 25, 2026.

(2) Claimant began his work for the employer in a different role, before moving to the service sales representative position in mid-2022. Claimant's duties as a service sales representative included managing or servicing customer accounts within his assigned route.³

¹ Decision # L0017135440 stated that claimant was denied benefits from February 22, 2026 to February 20, 2027. However, decision # L0017135440 should have stated that claimant was disqualified from receiving benefits beginning February 22, 2026 and until he earned four times his weekly benefit amount. See ORS 657.176.

² Claimant's name appears to be spelled incorrectly in Department records. If claimant wishes to correct the spelling of his name, he may do so by contacting the Department directly.

³ The exact nature of the employer's business is not clear from the record, but appears to include institutional laundry service.

(3) On September 18, 2025, the employer met with claimant to present him with a performance improvement plan (PIP) because of concerns relating to his performance. The PIP required claimant to renew 13 customer accounts whose contracts were slated to expire within the next three years. Seven of these accounts were of heightened priority, as their contracts were slated to expire within the next 18 months. Claimant was required to complete these contract renewals by January 1, 2026. Claimant understood the requirements of the PIP.

(4) After the September 18, 2025 meeting, claimant began attempting to convince his customers to renew their contracts, so that he could fulfill the requirements of the PIP, with particular focus on the seven accounts whose contracts were closer to expiration. To that end, claimant regularly spoke to his customers about the matter and offered to bring in managers or other sales staff to speak to the customers if they were reluctant. However, most of claimant's customers declined to renew their contracts, and several of them requested that claimant stop inquiring about renewal. The primary reason for the customers' decisions not to renew their contracts was because they could no longer afford the employer's services.

(5) Claimant also met with his manager several times to discuss his progress towards the PIP's goals. During those meetings, claimant explained to the manager that he was having difficulty in obtaining the required contract renewals because of the customers' financial concerns. The manager did not offer claimant help with this issue. Additionally, per the terms of the PIP, claimant was supposed to schedule field calls with his manager, giving the manager 48 hours notice each time. Claimant did so twice. On both occasions, however, the manager declined to join claimant in the field.

(6) By January 1, 2026, claimant had managed to renew two of the 13 contracts that were listed in the PIP. Because claimant failed to meet the goals set forth in the PIP, the employer decided to discharge him. On February 26, 2026, after a delay due to the extended absences of two human resources (HR) employees, the employer discharged claimant because he had failed to meet the goals set forth in the PIP.

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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because he had failed to meet the goals set forth in the PIP: namely, that he convince 13 of his customers to renew their contracts that were slated to expire. The order under review concluded that this constituted misconduct, explaining that because claimant had worked in the service sales representative role for approximately four years, his failure to meet the requirements of the PIP did not fall under the exception for mere inefficiency resulting from lack of job skills or experience. Order No. 26-UI-330038 at 3. This explanation is neither supported by substantial evidence nor based on substantial reason.

For an act or omission to be considered misconduct, it must be a willful or wantonly negligent violation of the employer's standards of behavior (or disregard the employer's interests willfully or with wanton negligence). In other words, for purposes of the misconduct analysis, it is not sufficient merely to show that conduct violated the employer's expectations. Instead, any such violation must be done either intentionally (willfully), or without regard for the consequences of one's actions (with wanton negligence). Thus, a finding of misconduct inherently requires an examination of the claimant's state of mind to determine whether they either intentionally violated the employer's expectations, or violated those expectations without regard for the consequences of their actions. The order under review failed to conduct such an analysis. It likewise excluded from its findings of fact material several facts regarding claimant's state of mind in relation to his failure to renew the required number of expiring contracts.

The record shows that claimant made several efforts, over the course of several months, to obtain the contract renewals that the PIP required. He was unable to do so because the customers whose contracts were expiring were not interested in renewing their contracts, because, at least primarily, they could no longer afford the employer's services. In addition to the sales calls that claimant made to these customers, claimant also regularly met with his manager to discuss his progress on the PIP. Likewise, claimant unsuccessfully attempted to include his manager on some of these sales calls, as required by the PIP, and presumably for purposes of helping to close sales with his customers. The record lacks evidence showing that claimant failed to take the requirements of the PIP seriously, that he did not make a good faith effort to renew the contracts as required, or that he intentionally engaged in any conduct which would have hampered such efforts. Thus, the record shows that claimant attempted in good faith to meet the goals of the PIP, but was unable to do so despite his good-faith attempt. As such, the record shows that claimant did not act without regard for the consequences of his actions, and his failure to meet the employer's expectations therefore was not wantonly negligent.

Because the primary reason that claimant's customers declined to renew their contracts was their financial inability to continue with the employer's services, it is impossible to determine from the record whether it was even possible for claimant, or anyone else in such a position, to meet the requirements of the PIP. To the extent that it would have been possible, however, it stands to reason that claimant's failure to do so was, more likely than not, the result of insufficient skills as a salesperson. Contrary to the reasoning asserted by the order under review, it is entirely possible for a person who has been in a position for several years to fail to meet their employer's performance expectations because of a lack of job skills, regardless of their experience. Thus, the record supports the conclusion that claimant's failure to meet the requirements of the PIP was, at worst, the result of mere inefficiency due to a lack of job skills, 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-330038 is set aside, as outlined above.

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

DATE of Service: July 9, 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

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

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

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