

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0548

Affirmed
Request to Reopen Allowed
Disqualification

PROCEDURAL HISTORY: On September 2, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0012606556). The employer filed a timely request for hearing. On March 3, 2026, notice was mailed to the parties that a hearing was scheduled for March 17, 2026. On March 17, 2026, the employer failed to appear at the hearing, and ALJ Krueger issued Order No. 26-UI-324001, dismissing the employer's request for hearing due to their failure to appear. On April 5, 2026, the employer filed a timely request to reopen the March 3, 2026 hearing. On May 8, 2026, ALJ Krueger conducted a hearing, and on May 11, 2026 issued Order No. 26-UI-329877, allowing the employer's request to reopen and reversing decision # L0012606556 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective June 1, 2025. On May 26, 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 him 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).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 26-UI-329877 allowing the employer's request to reopen the March 17, 2026 hearing. That part of Order No. 26-UI-329877 is **adopted**. *See* ORS 657.275(2). The rest of the decision addresses whether claimant was disqualified from receiving benefits based on the work separation.

FINDINGS OF FACT: (1) Pearl Specialty Market & Spirits, LLC employed claimant as their store's general manager from September 3, 2024 through June 5, 2025.

(2) From April through June 2025, the employer's owner was dissatisfied with aspects of claimant's performance. These included concerns about claimant ordering inventory in types or amounts that were contrary to the owner's directives, particularly regarding cigars; claimant's productivity and the productivity of the staff he supervised; and claimant failing to be at work during hours designated by the owner, or not performing work while at the store.

(3) Through April 2025, the owner would typically create work schedules for claimant and other store employees, and claimant would modify the schedules as he felt was appropriate. On April 13, 2025, the owner sent claimant an email that stated, in relevant part: "As I mentioned I'm making the schedule for now. So do not make any changes to the schedule except when you run it by me . . . As I mentioned you need to have anyone with scheduling special requests or sufficient hour issues to reach out to me directly." Transcript at 23-24.

(4) Claimant understood the directive in the email but disagreed with it. Thereafter, the owner would continue to post work schedules and claimant would make changes to accommodate employee requests. The owner discovered "a few weeks" after the email while reviewing payroll records that claimant had continued to alter the schedules. Transcript at 24. The owner spoke with claimant about this and again told him that "any challenges people have [with the schedule] they need to go through me." Transcript at 24. Claimant thereafter continued to make changes to schedules to accommodate employee requests without the owner's knowledge or approval, and the owner reiterated the directive on other occasions.

(5) On June 5, 2025, the owner discharged claimant based on his concerns about claimant's performance and attendance, as well as claimant's continuing failure to abide by the directive not to make any changes to work schedules. When they discharged claimant, the employer paid claimant the equivalent of wages he would have received through June 20, 2025.

CONCLUSIONS AND REASONS: Claimant was discharged 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 dissatisfaction with several aspects of his performance, particularly from April 2025 through June 5, 2025. Claimant provided rebuttals at hearing to several of the employer's allegations regarding these deficiencies. Because the issue of claimant altering work schedules is dispositive of the misconduct analysis, it is unnecessary to address the other alleged performance issues.

In an April 13, 2025 email, the owner directed claimant not to alter work schedules, either for claimant himself or the employees he supervised, and for claimant to direct any requests for alterations to the owner. Claimant did not dispute that he received and read that email. Claimant also did not rebut the owner's testimony that claimant continued to make changes to employees' work schedules following the email and subsequent conversations with the owner regarding compliance with the directive. Claimant testified that this directive was "a point of contention" with the owner over which they "butt[ed] heads a little bit," and asserted that the directive was "not reasonable." Transcript at 51, 55. Claimant explained that employees "hated" having to direct scheduling requests to the owner "because he was intimidating [a]nd the employees were not comfortable with him and were not comfortable contacting him directly. . . They hated that as a policy." Transcript at 55. Claimant also asserted that not being allowed to address, on his own, matters such as an employee's unexpected absence due to illness by calling in another employee to work was unreasonable. Transcript at 56. Claimant denied changing the schedule to his own benefit, as the owner had alleged at hearing, but admitted to continuing to "make adjustments on the fly" for other employees. Transcript at 52.

The owner's expectation that claimant would comply with the scheduling directive in the April 13, 2025 email was a standard of behavior that an employer has the right to expect of an employee. Claimant felt that the directive had unpleasant impacts on employees and made it difficult for claimant to manage the store effectively. However, even if claimant was accurate in his assessment of the directive's effects on the business and other employees, the directive itself was not unreasonable, and claimant's willful failure to follow it constituted misconduct. Moreover, because claimant continued to change the schedule over the course of nearly two months, despite repeated conversations with the owner about complying with the directive, claimant's actions were part of a pattern, rather than a single or infrequent occurrence, and therefore cannot be excused as an isolated instance of poor judgment. Accordingly, the employer discharged claimant for misconduct.

For these reasons, claimant was discharged for misconduct, and therefore disqualified from receiving unemployment insurance benefits effective June 1, 2025.

DECISION: Order No. 26-UI-329877 is affirmed.

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

DATE of Service: July 6, 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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