

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0551

Reversed
Disqualification

PROCEDURAL HISTORY: On March 23, 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 # L0016678342). The employer filed a timely request for hearing. On May 15, 2026, ALJ Micheletti conducted a hearing at which claimant failed to appear, and on May 20, 2026 issued Order No. 26-UI-330806, affirming decision # L0016678342. On May 28, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision.

FINDINGS OF FACT: (1) Great Clips South Oregon employed claimant as a hair stylist at their salon from January 13, 2025 through January 16, 2026.

(2) The employer expected their employees to report for work as scheduled, return from breaks on time, and timely notify the employer if they would be late or absent. Claimant understood these expectations.

(3) Over a six-week period in December 2025 and January 2026, claimant was more than 15 minutes late for nine of 17 scheduled shifts. Claimant received repeated warnings about her attendance during this period.

(4) On January 15, 2026, claimant was working a scheduled shift, and during a paid 10-minute break left the salon for 60 minutes without notifying the employer. The salon manager was not present that day, and learned of this through other employees. The manager planned to address the matter with claimant the following day.

(5) On January 16, 2026, claimant was asked about her 60-minute absence from the previous shift. Claimant asserted that she had been driving during the break, something had "fall[en] off the bottom of [her car]," and she had been attempting to repair it so that she could drive back to work. Transcript at 14.

When asked why she did not notify the employer she would not be returning by the end of the 10-minute break, claimant replied that she “was panicked.” Transcript at 14. The manager was able to view claimant’s car through the salon window, and nothing appeared abnormal about it.

(6) The employer did not believe claimant’s explanation regarding the extended break and decided that they would discharge her for that reason at the end of her January 16, 2026 shift. During the shift, what appeared to be a pipe used for smoking illegal drugs was found among claimant’s belongings at the salon. This discovery reinforced the employer’s decision to discharge claimant, but the matter had already been decided following claimant’s explanation for the extended break. Claimant was discharged at the end of her January 16, 2026 shift.

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 for being absent from work for 60 minutes during her January 15, 2026 shift when she was entitled to only a 10-minute break. Although between that incident and the time claimant was discharged, the employer found claimant in possession of what they believed to be drug paraphernalia, this was not a proximate cause of claimant’s discharge because the decision to discharge had already been made.¹ The order under review concluded that claimant’s absence on this occasion was caused by a factor beyond her control, rather than willful or wantonly negligent behavior. Order No. 26-UI-330806 at 3. The record does not support this conclusion.

¹ 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).

The employer reasonably expected their employees to report for work as scheduled, return from breaks on time, and timely notify the employer if they would be late or absent. It can reasonably be inferred that claimant understood these policies, particularly in light of her having received several warnings in the preceding six weeks that stressed the importance of adherence to these expectations. Claimant's explanation to the employer regarding her absence was that something had fallen off her car while driving during the 10-minute break; that it took her 60 minutes to restore the car to a condition where it could be driven back to the salon; and that she "panicked" and therefore did not attempt to notify the employer that she could not return on time from the break.

If claimant had driven at least five minutes away from the salon during the break, it stands to reason that she knew or should have known that she could not have made it back to her workstation within 10 minutes of starting the break, regardless of any car problems, and that she was indifferent to the consequences of her actions in doing so. If claimant had driven less than five minutes away from the salon when her car unexpectedly became undriveable, it also stands to reason that claimant could have notified the employer of this by phone before the end of the 10-minute break or could have walked back to the salon in far less than 60 minutes. Because claimant should have understood from the recent warnings that another attendance violation would likely place her employment in jeopardy, her failure to attempt to notify the employer that she would not return from break on time demonstrated indifference to the consequences of her actions, and to the employer's interests. Claimant therefore violated the employer's attendance policy with wanton negligence on January 15, 2026.

Claimant's actions during the final attendance violation demonstrated poor judgment, but did not exceed mere poor judgment. Claimant's 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, cheating, theft, self-dealing, or abuse of official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible. Therefore, whether claimant's conduct on that occasion can be excused as an isolated instance of poor judgment turns on whether it was a single or infrequent occurrence, rather than part of a pattern of other willful or wantonly negligent behavior.

Claimant was at least 15 minutes late for nine of her last 17 shifts. Claimant did not participate in the hearing, and the record does not show what explanation, if any, claimant gave the employer for being late on those occasions. However, given the number of occasions on which claimant was substantially late for work over a six-week period, it is reasonable to infer that claimant knew her actions violated attendance policies, and that she was acting with indifference to the employer's interests, and to the consequences of her actions, in failing to resolve the factors responsible for her tardiness. Therefore, claimant's January 15, 2026 attendance violation was part of a pattern of other wantonly negligent behavior, and cannot be excused as an isolated instance of poor judgment. Accordingly, claimant was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving benefits effective January 11, 2026.

DECISION: Order No. 26-UI-330806 is set aside, as outlined above.

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

DATE of Service: July 10, 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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