

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0552

Modified
Eligible Weeks 03-26 and 04-26
Disqualification Effective Week 05-26

PROCEDURAL HISTORY: On March 25, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 18, 2026 (decision # L0016716355).¹ Claimant filed a timely request for hearing. On May 8, 2026, ALJ Krueger conducted a hearing, and on May 12, 2026 issued Order No. 26-UI-330037, reversing decision # L0016716355 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation. On May 28, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kelley Automotive, LLC employed claimant as an automobile mechanic from approximately 2017 through January 22, 2026.²

(2) On January 21, 2026, the employer's owner returned to the shop after having been elsewhere for most of the day. The owner and claimant argued about a vehicle claimant had been repairing, with claimant believing that the owner was unhappy with the pace of his work, and the owner believing that the argument was about claimant's method of repairing the vehicle, specifically by use of a crowbar. Claimant believed that the owner treated him in a "hostile" manner during the argument, perhaps by calling him names, and claimant therefore left work early. Audio Record at 11:18. The owner then heard claimant "doing a burnout" with his vehicle's tires as he left the parking lot, of which the owner disapproved. Audio Record at 18:25.

¹ Decision # L0016716355 stated that claimant was denied benefits from February 1, 2026 to January 30, 2027. However, as decision # L0016716355 concluded that the work separation occurred on January 21, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 18, 2026, and until he earned four times his weekly benefit amount. See ORS 657.176.

² During this period claimant purported to quit work and the employer purported to discharge claimant on several occasions, but claimant never removed his tools from the workplace and always resumed working after a brief absence when this occurred. Therefore, the employment relationship appears to have continued uninterrupted during this time.

(3) Prior to claimant leaving work on January 21, 2026, the owner had been dissatisfied with claimant's attendance because he had been frequently absent without notice. However, as of the evening of January 21, 2026, the owner did not intend to discharge claimant for those attendance issues, or his actions at work or in the parking lot on January 21, 2026.

(4) Later on January 21, 2026, claimant texted the owner's father that he was giving two weeks' notice of his resignation due to the "hostile" treatment he believed he endured earlier that day. The owner was "relieved" that claimant had decided to resign, primarily due to the impact on the business of claimant's frequent absences. Audio Record at 18:58. The owner decided not to allow claimant to work the notice period since claimant felt that the workplace had become "hostile."

(5) On January 22, 2026, claimant reported for work as scheduled. The owner did not allow claimant to work that day or thereafter, and instead assisted claimant in moving his tools from the workplace to claimant's storage facility. Claimant had desired to work the two-week notice period, which would have ended on February 4, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged, not for misconduct, within 15 days of a planned voluntary leaving without good cause.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

If a claimant notified their employer they would quit work on a specific date, and the quit would have been without good cause, but the employer discharged the claimant, not for misconduct, no more than 15 days before the date of the planned quit, then the separation from work is adjudicated as if the discharge had not occurred and the planned quit had occurred. ORS 657.176(7). However, the claimant is eligible for benefits for the week in which the actual discharge occurred through the week before the week of the planned quit. ORS 657.176(7).

On January 21, 2026, claimant gave notice of his intent to resign, effective February 4, 2026. Claimant reported for work the next day, but the employer did not allow him to work and had claimant's tools removed from the workplace. Because claimant was willing to continue working for an additional period of time on and after January 22, 2026, but the employer did not allow him to do so, the work separation was a discharge. However, the discharge occurred within 15 days of February 4, 2026, the date claimant's resignation was to become effective.

The order under review concluded that claimant was discharged, not for misconduct, after giving notice that he would quit working two weeks later. Order No. 26-UI-330037 at 3-4. The record supports that claimant was discharged, but not for misconduct. However, the order failed to analyze whether claimant's planned voluntary leaving was with good cause, and therefore whether ORS 657.176(7) was applicable.

Planned Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Dept.*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Dept.*, 348 Or 605, 612, 236 P3d 722 (2010).

Claimant quit work because he believed that the owner spoke to him in a “hostile” manner during an argument on January 21, 2026. At hearing, claimant had difficulty recalling what exactly the owner said to him, but asserted that the owner had called him names such as “lazy,” “stupid,” and “dumbass.” Audio Record at 12:45. In contrast, the owner testified that he and claimant had been friends for many years, and he understood claimant to be particularly sensitive to being called “stupid,” or “dumb,” and was therefore certain that he had not used those words during the argument. Audio Record at 20:42. As claimant bears the burden of proof in showing that his planned voluntary leaving was for good cause, and these two accounts are no more than equally balanced, the facts have been found in accordance with the owner’s account. As such, the record does not show that the argument about claimant’s work on the vehicle was so contentious or inappropriate that it would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work. Therefore, claimant did not quit work due to a grave situation, and the planned voluntary leaving was without good cause.

Discharge. 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). “[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 record shows that the owner was dissatisfied with some aspects of claimant’s performance, primarily him having been frequently absent without notice. The owner also disapproved of claimant’s conduct on January 21, 2026, in which the owner alleged claimant used a crowbar to fix a vehicle’s bumper after having been directed not to fix it by that method, and claimant then “doing a burnout” in the parking lot, which the owner felt could have endangered people or property in the area. However, the discharge analysis focuses 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). The record does not show that the employer intended to discharge claimant for his actions on or before January 21, 2026, until receiving notice of his resignation. The owner testified that he was “relieved” to receive claimant’s resignation due to his inconsistent attendance, and aside from attendance concerns, it was claimant’s characterization of the workplace as “hostile” that made him decide not to allow

claimant to work the two-week notice period. Audio Record at 21:08 to 22:18. In his resignation notice, claimant had attributed the planned resignation to the alleged “hostile” treatment he believed he had endured on January 21, 2026. Therefore, the record shows that claimant’s resignation notice was the proximate cause of his discharge.

Although the owner apparently disagreed with claimant’s characterization of how the owner spoke to him as “hostile,” the acts of giving notice of intent to resign or expressing the opinion that the owner’s statements were hostile did not violate a standard of behavior that an employer has the right to expect of an employee. Accordingly, because claimant did not violate a reasonable employer expectation with respect to the proximate cause of his discharge, the discharge was not for misconduct.

For these reasons, claimant was discharged, but not for misconduct, within 15 days of a planned voluntary leaving without good cause. Under ORS 657.176(7), claimant is not disqualified from receiving unemployment insurance benefits based on the work separation for the weeks of January 18, 2026 through January 31, 2026 (weeks 03-26 and 04-26), but is disqualified effective February 1, 2026 (week 05-26), and until requalified.

DECISION: Order No. 26-UI-330037 is modified, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If 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.

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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