

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0555

Order No. 26-UI-330279 Reversed – Disqualification
Order No. 26-UI-330285 Affirmed –
Credit for Wages Earned before February 13, 2025 Not Canceled

PROCEDURAL HISTORY: On September 24, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's rights to benefits based on the wages earned prior to the date she was discharged were not canceled because claimant had not admitted to or been convicted of theft (decision # L0013153432). On November 25, 2025, the Department served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0014337108). The employer filed timely requests for hearing on decisions # L0014337108 and L0013153432.

On May 7, 2026, ALJ Blam conducted a consolidated hearing on the administrative decisions, at which claimant failed to appear. On May 14, 2026, ALJ Blam issued Orders No. 26-UI-330279 and 26-UI-330285, respectively affirming decisions # L0014337108 and L0013153432. On May 28, 2026, the employer filed applications for review of Orders No. 26-UI-330279 and 26-UI-330285 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 26-UI-330279 and 26-UI-330285 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2026-EAB-0555 and 2026-EAB-0554).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument because they did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) Travel Centers of America employed claimant as a customer service representative at their gas station and convenience store from September 6, 2022 until February 13, 2025.

- (2) The employer expected employees to refrain from engaging in theft in their store by taking items from the store's inventory without paying for the items. Claimant understood this expectation, as a policy prohibiting theft was contained in the employer's employee manual, which claimant signed and received upon hire. Claimant also took a loss prevention training in May 2024, for which she received a 100% passing score.
- (3) On December 22, 2024, the employer observed claimant taking several packs of cigarettes from their store shelves without paying for them.
- (4) On December 23, 2024, the employer's loss prevention specialist interviewed claimant about the matter. During the interview, claimant "admitted to stealing \$150 worth of cigarettes." Audio Record at 15:36. Claimant stated that she did so because "she hadn't gotten paid yet" and that she intended to pay for the packs of cigarettes later. Audio Record at 17:41.
- (5) Following the December 23, 2024 interview, the employer suspended claimant. The employer's site manager and loss prevention specialist investigated the matter and determined that claimant should be discharged for theft.
- (6) On February 13, 2025, the employer discharged claimant for violating the policy prohibiting employees from engaging in theft in their store by taking items from the store's inventory without paying for the items.
- (7) On January 21, 2025, claimant filed an initial claim for unemployment insurance benefits. The Department transmitted to the employer a notice of claim filed on March 4, 2025. On March 14, 2025, the employer responded to the Department, notifying it that the work separation was a discharge for what the employer considered to be theft.
- (8) No admission of theft by claimant was ever made to an authorized representative of the Department. Although the employer believed they had obtained a signed admission of theft from claimant and conveyed that writing to their third-party administrator to send to the Department, no signed admission of theft by claimant was ever provided to the Department. No court of competent jurisdiction ever convicted claimant of theft based on the circumstances that led the employer to discharge her.

CONCLUSIONS AND REASONS: The employer discharged claimant for misconduct. Claimant's rights to benefits based on wages earned before February 13, 2025 are not canceled due to commission of theft.

Order No. 26-UI-330279 – 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) (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 on February 13, 2025 for violation of their policy prohibiting employees from engaging in theft in their store by taking items from the store’s inventory without paying for the items. Claimant understood this policy. The record shows that a policy prohibiting “theft” was contained in the employer’s employee manual, and that claimant signed and received the manual when she was hired. Exhibit 1 at 6, 8. That claimant knew that the employer expected her not to take items from the store’s inventory without paying for the items is bolstered by the fact that, in May 2024, claimant took a loss prevention training, for which she received a 100% passing score. Exhibit 1 at 5. Since loss prevention typically entails the practice of addressing inventory shrinkage, including by theft, it can be inferred that claimant was instructed during this training that the employer disapproved of anyone taking their items of inventory without paying for the items.

It is also a matter of common knowledge that, absent some special or unusual circumstance, retail store employees, such as claimant, are not supposed to take items from the inventory of the store at which they work without first paying for the items. There is no evidence in this case of any special circumstance such as the employer permitting employees to take items on credit to be paid for later, or of allowing an employee to take items without paying for them and then subtracting the cost of the items from the employee’s paycheck. Nor is there any evidence that claimant sought or received permission to take the cigarettes first and pay for them later. For these reasons, the weight of the evidence supports that claimant knew and understood that the employer prohibited employees from engaging in theft in their store by taking items from the store’s inventory without paying for the items.

Claimant’s conduct on December 22, 2024 violated the employer’s policy with at least wanton negligence. On that date, claimant took several packs of cigarettes from the employer’s store shelves without paying for them. When interviewed the next day, claimant admitted that she had stolen \$150 worth of cigarettes. Claimant also stated that she took the packs of cigarettes because “she hadn’t gotten paid yet” and that she intended to pay for the items later. This evidence supports that claimant recognized that she did not have money to pay for items because she had not yet been paid, formed the intent to pay for the items later, and then took the items without paying for them. Claimant therefore acted consciously and with indifference to her actions, resulting in a violation of the employer’s policy that she knew or should have known would probably result. Claimant thus violated the employer’s expectations with wanton negligence.

Claimant’s wantonly negligent violation was not an isolated instance of poor judgment because it exceeded mere poor judgment. By taking the packs of cigarettes from the employer’s inventory without

paying for them, claimant engaged in a breach of trust because she took the employer's property without their permission and without compensating them for it. This was a breach of trust that was objectively irreparable in nature, as the property claimant took had a value of \$150, which is not a trivial amount of money.¹ Accordingly, claimant's act of taking the packs of cigarettes without paying for them exceeded mere poor judgement because it created an irreparable breach of trust in the employment relationship.

Moreover, claimant's conduct met the elements of the crime of theft and so was tantamount to unlawful conduct. Under ORS 164.015(1), a person commits theft "when, with intent to deprive another of property or to appropriate property to the person," the person "takes, appropriates, obtains or withholds such property from an owner thereof." ORS 164.015(1). "With intent" means that "a person acts with a conscious objective to cause the result or to engage in the conduct so described." ORS 161.085(7).

Here, claimant acted with the conscious objective to take property from the employer, by taking the packs of cigarettes from the employer's inventory without paying for them. While claimant may have formed the intent to pay for the cigarettes later, she completed the act of taking the cigarettes and did so with the intent of depriving the employer of them. As mentioned above, there is no evidence in this case of any special circumstance such as the employer permitting employees to take items on credit to be paid for later, or of claimant having sought or received permission to take the cigarettes first and pay for them later. As such, the record supports that claimant had the requisite intent to deprive the employer of the cigarettes. The record therefore shows that claimant's conduct met the element of ORS 164.015(1) and so was tantamount to unlawful conduct. Accordingly, claimant's act of taking the packs of cigarettes without paying for them also exceeded mere poor judgement because it was tantamount to unlawful conduct. Therefore, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective February 9, 2025.

Order No. 26-UI-330285 – Cancellation of wage credits earned before date of discharge due to commission of theft. If the Department finds that a claimant was discharged for misconduct because of the commission of a felony or theft in connection with work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the employer notifies the Department of the discharge within 10 days after the notice of claim filed was issued or 30 days after the initial claim determination was issued, and:

- (a) The claimant has admitted commission of the felony or theft to the Department;
- (b) The claimant has signed a written admission of the felony or theft and the written admission has been presented to the Department; or
- (c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

ORS 657.176(3).

Applying the elements of ORS 657.176(3), claimant's credit for wages earned prior to her February 13, 2025 discharge date should *not* be canceled. This is the case because claimant did not admit to

¹ See *Callaway v. Employment Dept.*, 225 Or App 650, 202 P3d 196 (2009) (a determination of whether a claimant's conduct caused a breach of trust is objective, not subjective, and the employer cannot unilaterally announce a breach of trust if a reasonable employer in the same situation would not).

commission of theft to the Department, the Department was never presented with any signed written admission of the theft by claimant, and no court of competent jurisdiction ever convicted claimant of theft based on the circumstances that led the employer to discharge her. Accordingly, the record fails to show that all of the essential elements of ORS 657.176(3) were met. As a result, claimant's credit for wages earned prior to her February 13, 2025 discharge date should *not* be canceled.

In summary, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective February 9, 2025. However, claimant's credit for wages earned prior to her February 13, 2025 discharge date should *not* be canceled.

DECISION: Order No. 26-UI-330279 is set aside, as outlined above. Order No. 26-UI-330285 is affirmed.

S. Serres and A. Steger-Bentz;
D. Hettle, 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 دستورالعمل 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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