

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0576

Late Application for Review Allowed
Affirmed
Disqualification

PROCEDURAL HISTORY: On March 5, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits from February 1, 2026 to January 30, 2027 (decision # L0016327272). Claimant filed a timely request for hearing. On April 2, 2026, ALJ Murdock conducted a hearing at which the employer failed to appear, and on April 8, 2026 issued Order No. 26-UI-326424, modifying decision # L0016327272 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective February 1, 2026, and until requalified. On April 28, 2026, Order No. 26-UI-326424 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On June 3, 2026, claimant filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the statement included with claimant's late application for review, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her June 30, 2026 submission to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The submission 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 her 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, and EAB Exhibit 1. See ORS 657.275(2). EAB also considered claimant's June 29, 2026 written argument.

FINDINGS OF FACT: (1) Oregon Health Authority employed claimant from February 29, 2016 through February 4, 2026, most recently as an operations policy analyst.

(2) Employees holding claimant's position were subject to ongoing background checks pursuant to state law, and maintaining a determination of fitness for duty was a condition of continued employment. Updated background checks were obtained when an employee self-reported having been charged with a crime, or if the employer suspected that an employee had been charged with a crime or was the subject of an allegation of child abuse or neglect. Claimant understood these policies, but was not aware of a five-day deadline by which self-reporting of a criminal charge was required. Claimant understood that a conviction related to abuse or neglect of a child, or a finding by state authorities that an allegation of child abuse or neglect was substantiated, would likely result in a finding of unfitness for duty.

(3) On February 22, 2024, claimant was working from home and caring for her six-year-old niece. Claimant's niece complained of stomach discomfort, and claimant decided to leave home to purchase food to accommodate her niece's dietary restrictions. Claimant asked if her niece would accompany her to the store, but she did not want to go, and claimant left her in the home alone. Claimant expected to return home in 15 to 20 minutes.

(4) While claimant was away, her niece left and was picked up by police walking alone alongside a road .8 miles from the home. Police brought the child back to claimant's home before claimant returned from the store. When questioned, claimant initially told police that she had been at a medical appointment before admitting that she had been shopping for food. Claimant was cited for a misdemeanor violation of ORS 163.545(1), child neglect in the second degree. The matter was also reported to Child Protective Services (CPS), who conducted their own investigation.

(5) By March 11, 2024, the employer had learned of claimant's pending criminal charge and CPS investigation.

(6) On June 28, 2024, claimant pleaded guilty to a violation of ORS 163.545(1) and sentence was deferred for 18 months under terms which, if successfully completed, would result in dismissal of the charge.

(7) On October 10, 2024, CPS concluded their investigation and issued a written determination that the allegation of child neglect was founded.

(8) On October 16, 2024, the employer received results of an updated background check concluding that claimant was not fit for duty based on her guilty plea and CPS determination. The employer placed claimant on paid administrative leave while she appealed the results of the background check.

(9) On June 11, 2025, the Office of Administrative Hearings (OAH) issued an order affirming the determination that claimant was not fit for duty. The employer then initiated the process to discharge claimant as required by a collective bargaining agreement.

(10) On October 20, 2025, the criminal case against claimant was dismissed after she fulfilled the terms of the plea agreement.

(11) On February 4, 2026, the employer discharged claimant primarily based on her inability to work in her position due to the determination that she was not fit for duty. Additionally, the employer cited claimant having initially made a false statement to the police; the employer's belief that claimant failed to report the criminal charge within five days; and the employer's belief that claimant had been food shopping and participating in the police investigation during times she purported to have been working.

(12) Order No. 26-UI-326424, mailed to claimant's address on file with OAH on April 8, 2026, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 26-UI-326424 at 4. Order No. 26-UI-326424 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before April 28, 2026 to be timely."

(13) Claimant did not receive Order No. 26-UI-326424 in the mail, and throughout April and May 2026, contacted the Department to inquire about its status but was not told that an order had been issued. On June 2, 2026, a Department representative told claimant that an order had been issued and that she should contact OAH for assistance.

(14) On June 3, 2026, claimant spoke with an OAH representative and received an emailed copy of Order No. 26-UI-326424. Claimant filed a late application for review with EAB later that day.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Claimant was discharged for misconduct.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ended. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 26-UI-326424 was due by April 28, 2026. Claimant filed her application for review on June 3, 2026, and it was therefore late. Claimant wrote in a statement accompanying the late application for review that she had not received the order in the mail and had been inquiring about its status for the previous two months before learning information about its issuance the day prior, on June 2, 2026. EAB Exhibit 1 at 1. Claimant further wrote that a copy of the order was sent to her the same day she filed the late application for review, June 3, 2026. EAB Exhibit 1 at 1.

While it is unclear why Order No. 26-UI-326424 was not delivered by mail, it can reasonably be inferred that it was a factor beyond claimant's reasonable control that prevented timely filing of an application for review. Good cause to extend the filing deadline had therefore been shown. Because claimant's application for review was filed on June 3, 2026, the day the factor that provided timely filing

ended by claimant receiving an emailed copy of the order, it was filed within a “reasonable time.” Accordingly, claimant’s late application for review is allowed.

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).

ORS 163.545(1) provides: “A person having custody or control of a child under 10 years of age commits the crime of child neglect in the second degree if, with criminal negligence, the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.”

ORS 161.085(10) provides: “‘Criminal negligence’ or ‘criminally negligent,’ when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.”

Claimant was discharged primarily due to the finding of unfitness for duty that resulted from the February 22, 2024 incident involving her niece. The employer also cited some of the surrounding circumstances of that incident, including claimant’s initial false statement to police; that the incident may not have been timely reported to the employer by claimant; and that the incident and investigation may have occurred during time claimant represented to the employer she had been working.¹ However, it is unnecessary to analyze these additional circumstances, as the incident itself and its effect on claimant’s ability to maintain the required fitness determination is dispositive of whether claimant was discharged for misconduct. As such, the incident itself and its effect on claimant’s ability to maintain the required fitness determination was the proximate cause of the discharge and the focus of the analysis. See, e.g., *Appeals Board Decision 12-AB-0434*, March 16, 2012 (discharge analysis focuses on

¹ At hearing, claimant disputed the accuracy of these allegations except for having made the initial false statement to police.

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 maintain a finding of fitness for duty in initial and subsequent background checks as a condition of employment. Claimant understood this expectation. On February 22, 2024, claimant left her six-year-old niece alone at her home while she went to purchase food. During claimant's absence, her niece walked .8 miles from the house, was picked up by police, and brought back to the house before claimant returned. Claimant testified that she had considered bringing her niece with her to the store but decided against it because her niece did not want to go. Transcript at 27. Further, claimant testified that she did not "know [her niece's] maturity or her. . . way of thinking of harm" when she decided to leave her niece alone. Transcript at 27. Particularly in light of claimant's guilty plea to a violation of ORS 163.545(1), an element of which is having acted with "criminal negligence," the record shows that claimant's actions were wantonly negligent, as she acted consciously, was indifferent to the consequences that could result from leaving her niece unattended, and should have known that her conduct—and the legal consequences that could flow from it—would probably result in a violation of the employer's expectations.

Claimant asserted that the incident was not "connected with work" within the meaning of ORS 657.176(2)(a), as it did not involve her work duties. *See, e.g.*, Transcript at 39. However, courts have repeatedly held that willful or wantonly negligent off-duty conduct that makes it impossible for a claimant to comply with their employer's policies is "connected with work." *See, e.g., Weyerhaeuser Co. v. Employment Div.*, 107 Or App 505, 812 P2d 44 (1991) (where off-duty conduct makes it impossible for an individual to comply with the employer's attendance requirements, the relevant question is whether claimant willfully created the situation that made it impossible for him to attend work or to comply with the policy); *see also Barnes v. Employment Dept.*, 171 Or App 342, 15 P3d 599 (2000) (claimant created a situation that made it impossible for him to comply with his employer's requirement that he maintain a valid driver's license); *Freeman v. Employment Dept.*, 195 Or App 417, 98 P3d 402 (2004) (claimant created a situation that made it impossible to comply with the employer's requirement that he maintain driving privileges); *Dawson v Employment Dept.*, 251 Or App 379, 283 P3d 434 (2012) (claimant's wantonly negligent decision to drink and drive resulted in his incarceration and made it impossible for claimant to comply with the employer's requirement that he remain available for work). Here, claimant understood that she was required to maintain a finding of fitness for duty to legally be eligible to remain in her position, and acknowledged at hearing that she knew that if she "engaged in any abuse or neglect of vulnerable people that it would disqualify [her] from working there." Transcript at 25-26. Therefore, claimant's wantonly negligent conduct on February 22, 2024, and its effect on her ability to maintain a fitness determination, was connected with work.

Nonetheless, isolated instances of poor judgment, within the meaning of OAR 471-030-0038(3)(b), are not misconduct. While claimant's conduct was isolated, it exceeded mere poor judgment because it violated the law. Claimant's plea of guilty to a violation of ORS 163.545(1), which was an admission that she had acted with criminal negligence, established by a preponderance of the evidence that the conduct constituting the proximate cause of her discharge also violated the law. Although the criminal charge was later dismissed pursuant to a plea agreement after claimant's successful completion of probation, her actions violated the law at the time they occurred. Accordingly, claimant's conduct

cannot be excused as an isolated instance of poor judgment because it exceeded mere poor judgment, and claimant was therefore discharged for misconduct connected with work.

For these reasons, claimant was discharged for misconduct and is therefore disqualified from receiving unemployment insurance benefits effective February 1, 2026.

DECISION: The late application for review filed June 3, 2026 is allowed. Order No. 26-UI-326424 is affirmed.

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

DATE of Service: July 16, 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

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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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