

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0591

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 29, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective March 8, 2026 (decision # L0017269334).¹ Claimant filed a timely request for hearing. On May 27, 2026, ALJ Scott conducted a hearing, and on May 28, 2026 issued Order No. 26-UI-331377, reversing decision # L0017269334 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On June 9, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

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) American National Insulation, Inc. employed claimant as a driver and warehouse worker for their insulation contracting business from May 13, 2024 through March 13, 2026. Driving was claimant's primary duty, and he was therefore required to hold a valid driver's license.

(2) The employer maintained a "Driver Management Policy" which contained several provisions that applied to their drivers. Exhibit 2 at 2. In addition to requiring a valid driver's license, these provisions included, in relevant part, that drivers would be disqualified from driving for the employer due to "Drug/Alcohol violations[.]" Exhibit 2 at 3. The policy also included a provision requiring that drivers "notify their supervisor/branch manager by the next working day of the occurrence of a [driving under the influence violation], moving violation, or incident/crash while operating any vehicle (non-company vehicle)." Exhibit 2 at 4. The policy also stated, in relevant part, "The company may suspend or

¹ Decision # L0017269334 stated that claimant was denied benefits from March 8, 2026 to March 13, 2027. However, decision # L0017269334 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 8, 2026 and until he earned four times his weekly benefit amount. See ORS 657.176.

withhold driving privileges until the outcome of any pending civil, criminal, or other legal action against the driver has been completed. Credible evidence will be considered a violation of this policy, a conviction is not required.” Exhibit 2 at 3. Claimant received training on the Driver Management Policy when he was hired.

(3) On March 4, 2026, claimant was charged with driving while under the influence (DUI) while off-duty and in an private vehicle, and his blood alcohol level (BAC) tested at 0.14. At the time, claimant was not driving, but was instead sitting behind the wheel of a parked car. Claimant’s license was never suspended or revoked as a result of the charge.

(4) On March 5, 2026, claimant reported to the employer that he had been charged with DUI the previous day.

(5) On March 13, 2026, the employer discharged claimant because he had been charged with a DUI, which they felt violated their Driver Management Policy. Claimant had never previously incurred any violations of the employer’s policies.

(6) On April 30, 2026, the DUI charge against claimant was dismissed in the Municipal Court of Washington for the Cities of Battle Ground, Ridgefield, and La Center. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant was discharged, but not 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).

The employer discharged claimant because he had been charged with a DUI on March 4, 2026, and the employer felt that this constituted a violation of their Driver Management Policy. That policy, in relevant part, required that claimant possess a valid driver’s license; required that he notify the employer by the next working day if he incurred a DUI charge, moving violation, or other driving incident; and that any drug or alcohol violations or suspensions due to moving violations would disqualify him driving for the employer. The employer has not met their burden to show that claimant’s conduct violated any of these provisions of the policy.

The record shows that claimant possessed a valid driver’s license before, during, and after the March 4, 2026 incident, and that it was never suspended as a result of that incident. As such, claimant did not violate the employer’s policy requiring him to possess a valid driver’s license. Claimant also notified the employer on March 5, 2026, the following business day after the incident, that he had incurred the DUI

charge. Claimant therefore complied with that provision of the policy. Most importantly, however, claimant having incurred the DUI charge did not actually violate the policy.

As claimant's criminal case was heard in a Washington municipal court, it can be reasonably inferred that the charge itself was incurred there, and that Washington law therefore applies. RCW 46.61.502 states, in relevant part:

(1) A person is guilty of driving while under the influence of intoxicating liquor, cannabis, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506[.]

Thus, an essential element of a DUI charge under Washington law is that the defendant must have been *driving* while intoxicated. Here, the only evidence in the record shows that claimant was intoxicated while in a vehicle that was *parked*. The record does not show that claimant actually drove anywhere, at any time, while intoxicated. The fact that the DUI charge against claimant was dismissed also suggests that the prosecution in that case lacked sufficient evidence to show that claimant drove at all while he was intoxicated. Thus, the employer has failed to prove by a preponderance of the evidence that claimant actually incurred a "Drug/Alcohol violation."

It should be noted as well that the employer "may suspend or withhold driving privileges until the outcome of any pending civil, criminal, or other legal action against the driver has been completed," and that "credible evidence" was sufficient to be considered a violation of the policy, regardless of whether the employee has actually been convicted. It is not clear how the employer weighs the discretion it affords itself in deciding whether to suspend or withhold driving privileges, or why the employer decided in this instance to discharge claimant without waiting for the criminal charges against claimant to resolve when the policy dictates that it may do so. Regardless, even by the terms of the above provision, in which the employer considered "credible evidence" to be a violation of the policy even when the employee has not been convicted of the charge against them, the employer has not met their burden to show that claimant violated their policy.

The only evidence that the employer presented at the hearing regarding the charge against claimant was that he incurred the charge itself. The above policy provision cannot be reasonably construed to mean that merely being charged with a DUI, without evidence to support the conclusion that the employee more likely than not was actually *guilty* of that offense, is "credible evidence." The record fails to even show that the employer engaged in any independent investigation to determine the credibility of the charge against claimant. As such, the employer has not shown, by a preponderance of the evidence, that they had credible evidence that claimant was guilty of the DUI charge he incurred.

Because claimant did not violate any of the provisions of the Driver Management Policy cited above, claimant was not discharged due to a willful or wantonly negligent violation of the employer's standards of behavior. Claimant therefore was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-331377 is affirmed.

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

DATE of Service: July 23, 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.

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