

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0601

Reversed
Disqualification

PROCEDURAL HISTORY: On May 13, 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 February 8, 2026 (decision # L0017523002). Claimant filed a timely request for hearing. On June 5, 2026, ALJ Andersen conducted a hearing, and on June 11, 2026 issued Order No. 26-UI-332624, reversing decision # L0017523002 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 15, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Multnomah Education Service District employed claimant as a behavioral support facilitator from August 2022 through February 11, 2026. Claimant began his shifts at 8:15 a.m.

(2) The employer's attendance policy prohibited employees from being absent from work without sufficient accrued leave to cover the absence, except in cases where the employee had applied for and been granted protected leave or accommodations under the Americans with Disabilities Act of 1990 (ADA). The policy also required employees, when absent from or late to work, to notify their classroom teacher, the school's administrator, and the administrative assistant of the absence or late arrival; and to enter the absence or late arrival into the employer's attendance management system, Frontline, so that the employer could hire a substitute for the employee when necessary. The employer provided employees with copies of this policy at the beginning of each school year. Claimant signed an acknowledgement of receipt of the policy on August 26, 2025.

(3) Beginning in June 2025, the employer "engaged [claimant] in coaching . . . to address failures to report to work on time and failures to communicate appropriately when [claimant] knew or should have known [he] would be late or absent." Exhibit 1 at 2.

(4) On December 16, 2025, claimant did not notify the employer that he would be late for work.

(5) On December 17, 2025, claimant was late for work and did not follow the employer's call-out procedure. The employer sent claimant a reminder of the procedure after that incident.

(6) In or around December 2025, the employer, to make it easier for claimant to follow their call-out procedure, simplified the procedure for claimant. Rather than having to separately contact three people, claimant would only be required to send a text message to a group chat with all three of the required parties, and report the absence or tardy in Frontline, by 6:30 a.m. on any day for which he would be late or absent.

(7) On January 15, 2026, the employer met with claimant and let him know that he had "accrued another unexcused and unapproved absence" on January 6, 2026. Transcript at 9.

(8) On January 16, 2026, claimant notified the employer via text at 7:59 a.m. that he would be late for his shift. On the same day, the employer notified claimant that he was to be suspended without pay from January 20, 2026 through January 22, 2026 as a "final opportunity to correct [his] conduct" and follow the employer's attendance policy. Exhibit 1 at 2.

(9) On January 23, 2026, claimant notified the employer at approximately 8:29 a.m. that he would be late for his shift that had already started that day. Claimant did not report to work that day. Afterwards, the employer sent him a reminder about their attendance policy.

(10) On January 26, 2026, claimant was absent from work. Although he reported the absence in Frontline, he did not message the group text as the employer had instructed him to do. The school's vice principal then scheduled a mandatory meeting with claimant for the following day to discuss his attendance.

(11) On January 27, 2026, claimant was absent from work and did not report to the mandatory meeting with the vice principal. Although claimant reported the absence in Frontline, he did not message the group text.

(12) Claimant's absences from work in at least the latter part of January 2026 were the result of his suffering from a "horrible full-body rash." Transcript at 18.

(13) On January 28, 2026, the employer placed claimant on paid administrative leave, pending potential discharge. On February 11, 2026, the employer discharged claimant because he had failed to follow the employer's attendance policy.

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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience 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 because he had failed to follow the employer’s attendance policy. The last of claimant’s attendance violations occurred on January 27, 2026, when claimant was absent from work due to an illness, but failed to text the group chat to notify the employer of the absence. As such, this was the proximate cause of the discharge, and the proper focus of the misconduct analysis.¹

The order under review concluded that “to the extent that the employer discharged claimant for failing to notify his supervisor that he would be late for work, the record shows that claimant’s omission was oversight and not intentional or wantonly negligent,” and that to the extent that claimant was discharged for the absence itself, the absence was the result of illness and therefore not misconduct. Order No. 26-UI-332624 at 3-4. While the order under review is correct that the absence itself was the result of illness and therefore not misconduct under OAR 471-030-0038(3)(b), the record does not support the conclusion that claimant’s failure to follow the employer’s call-out procedure was a mere “oversight” rather than a wantonly negligent violation of their expectations.

The parties’ accounts of claimant’s compliance with the employer’s call-out procedure varied. In testimony and documentary evidence, the employer provided a thorough account of claimant’s absences during December 2025 and January 2026, including details of the several ways in which claimant allegedly failed to adequately notify the employer of these absences.

Claimant offered some rebuttal of these assertions, testifying, for instance, that, as far as he remembered, he had “reached out to all three” personnel he was required to notify if he was going to be absent. Transcript at 15. A specific incident was not identified in that testimony, however. Similarly, claimant testified that he “was in contact with [the employer] the entire time” that he was absent on January 27, 2026; and that while he did not recall whether he had contacted any of the three personnel he was required to contact that day, he was “sure [he] would have, because [he] generally did call if anything was ever going on.” Transcript at 15–16. While claimant offered some other testimony regarding his belief that he generally followed the employer’s attendance policy, he did not otherwise specifically

¹ See generally June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division (the last occurrence of an attendance policy violation is considered the reason for the discharge).

rebut any of the employer's assertions regarding his absences, or alleged failures to follow the call-out procedure.²

The employer bears the burden of proof in a discharge case. Although the parties offered conflicting testimony regarding whether claimant adhered to their call-out procedure on January 27, 2026 or on other dates, the employer offered specific and detailed evidence of claimant's alleged policy violations, whereas claimant's testimony on those points lacked specificity and appeared to be largely based on speculation rather than a clear recollection. As such, where the parties' accounts differ, the employer's account is taken as more accurate, and the facts have been found accordingly.

The record shows that on January 27, 2026, claimant reported his absence from work that day on Frontline, but did not send a message to the group text that had been created for him as a means of more easily notifying the employer of his absences, and which the employer had told him he was required to use. Thus, claimant violated the employer's expectations regarding their call-out procedure. Claimant did not offer an explanation at hearing for why he did not properly notify the employer of his absence on that or any other day. The record does not, for instance, show that claimant was prevented from doing so due to his illness.

However, the record does show that the employer notified claimant of their call-out procedure, and attendance expectations generally, on multiple occasions beginning in at least June 2025, and that claimant had been suspended about a week before the final incident for failing to comply with the employer's attendance policy. As such, and because the record does not show that claimant was somehow prevented from texting the group chat about his absence on January 27, 2026, claimant more likely than not simply failed to consider the consequences of his actions in failing to adhere to the call-out procedure that day. As such, claimant's failure to do so was wantonly negligent.

Claimant's conduct on January 27, 2026 cannot be excused as an isolated instance of poor judgment because it was not isolated. The record shows that claimant had engaged in multiple other instances of the same or similar behavior. The employer spoke to claimant about his various attendance issues, including "failure to communicate appropriately" when claimant knew he would be late or absent, in June 2025. Despite this, claimant failed to properly notify the employer that he would be late or absent from work on December 16 and 17, 2025 and January 16, 23, and 26, 2026. As with the absence on January 27, 2026, the record does not show that claimant was prevented from following the employer's call-out procedure on any of those dates. Further, the last two of those absences took place shortly after claimant had been suspended for three days for failing to comply with the employer's attendance policy. Thus, claimant was aware that the employer was concerned about his failures to comply with the attendance policy, and the preponderance of the evidence fails to show that he could not have done so. Therefore, claimant's failures to comply with the attendance policy on these dates were also wantonly negligent violations of the employer's standards of behavior. As such, claimant's conduct on January 27, 2026 was not isolated, but was instead a repeated act.

Because claimant was discharged for a wantonly negligent violation of the employer's standard of behavior that was not an isolated instance of poor judgment, claimant was discharged for misconduct,

² See, e.g., Transcript at 19 ("...I had followed the procedures that kind of were set in front of me. We had agreements that I would call or text the teacher and [the vice principal]. I followed through with that and did as I was told, and was trying to make sure that I would not lose my job.")

and therefore is disqualified from receiving unemployment insurance benefits effective February 8, 2026.

DECISION: Order No. 26-UI-332624 is set aside, as outlined above.

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

DATE of Service: July 24, 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 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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