

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0603

Reversed & Remanded

PROCEDURAL HISTORY: On April 22, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0017130351). The employer filed a timely request for hearing. On May 22, 2026, ALJ Mott conducted a hearing, and on May 28, 2026 issued Order No. 26-UI-331366, reversing decision # L0017130351 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective January 4, 2026. On May 28, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Ambica, LLC employed claimant as a cook at their restaurant from September 16, 2024 through January 10, 2026.

(2) The employer expected that their employees would work through the end of their scheduled shifts unless excused. Claimant understood this expectation.

(3) On January 10, 2026, claimant was scheduled to work beginning at noon. Shortly after clocking in, one of the owners, "DT," approached claimant to discuss a change in staff work schedules. The change to claimant's schedule upset claimant, and he and DT argued about it. Claimant eventually walked away from the argument, and DT began speaking with two other employees in the kitchen about the schedule change. Claimant believed DT was talking about him, which made claimant more upset. Claimant announced that he was leaving and left the restaurant.

(4) At 1:48 p.m., claimant sent a text message to a group that included other restaurant employees and DT's wife. Claimant wrote: "You can't force me to work in an unprofessional, hostile work environment while talking to other employees about me." Transcript at 43. DT's wife replied, "What happened? Who talked with who?" and claimant responded, "[DT] is talking to [the two other employees] about me. I know he has a track record of doing this with ex-employees. I'm not taking abuse at work from anyone." Transcript at 44.

(5) At 5:40 p.m., DT sent an email to claimant, stating: “As you walked out of your shift today, we have to terminate your employment effective immediately. This is not the first time this has happened and unfortunately we can not operate with this uncertainty. Your final Paycheck is ready for pickup. Please bring back [employer-issued clothing] and the restaurant keys when you come back to pick up the check.” Exhibit 1 at 1.

(6) On January 13, 2026, claimant picked up his check at the restaurant. Claimant did not work for the employer after January 10, 2026.

CONCLUSIONS AND REASONS: Order No. 26-UI-331366 is set aside, and the matter remanded for further development of the record.

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).

The order under review concluded that claimant voluntarily quit work by leaving during his shift after making statements about the arguments with one of the owners, DT. Order No. 26-UI-331366 at 3. The record does not support this conclusion.

The parties gave conflicting accounts of the events of January 10, 2026. DT testified that he and claimant had argued about claimant’s work hours being reduced and redistributed to other employees for business reasons, and during the argument claimant said, “I quit. I’m leaving. I will not come back,” and walked to another part of the restaurant. Transcript at 13. DT further testified that he again approached claimant to discuss the matter and claimant complained that DT was “talking about [him] . . . to other people,” gathered his belongings, and left the restaurant without returning. Transcript at 13-14. DT explained that “because a lot of times people say that in anger and then come back,” he was not sure whether claimant had quit work, and therefore waited until the start of claimant’s next scheduled shift, at which claimant did not appear, to conclude that claimant had actually quit work. Transcript at 13-15.

In contrast, claimant testified that DT told him shortly after the beginning of his shift that his hours were going to change, and in particular, that DT gave him an ultimatum to either work on Sundays or “be fired,” as claimant refused to work Sundays due to family obligations. Transcript at 45. To deescalate the situation, claimant told DT he was taking a smoke break and walked toward the kitchen’s exterior door. Claimant testified that prior to exiting the restaurant, he heard DT talking to other employees in the kitchen about him, and “loudly” said, “[P]lease don’t talk to other employees about me . . . [Y]ou’re making this a hostile work environment. You need to stop,” but DT “kept talking to them.” Transcript at 46. Claimant testified that he then said to DT, “[Y]ou are not allowed to talk to other employees about me. Will you please stop? If you don’t stop then I’m going to go home,” then exited for his smoke break. Transcript at 47. Claimant testified that when he returned to the kitchen, DT was still talking to the other employees about him, and claimant said, “I told you if you continue to talk to other employees about me I was going to leave,” and DT replied, “Just go home then,” so claimant gathered his belongings, clocked out, and left the restaurant for the day. Transcript at 47. Claimant did not believe

that the employment relationship had ended at that time, and shortly after leaving the restaurant sent the group text that he would not tolerate the “unprofessional [and] hostile” work environment caused by DT talking to others about him. Transcript at 43. Claimant learned later that evening that he had been discharged by reading DT’s email.

One of the employees in the kitchen at the time of the incident was called as a witness by the employer. The witness testified that DT and claimant argued about the changes to claimant’s schedule, and claimant eventually walked away from the argument. Transcript at 31. DT then began talking to the witness and another employee, “kind of trying to explain himself again . . . about why the [scheduling] changes were necessary.” Transcript at 31. Claimant then said something to the effect of, “You are not going to talk about me behind my back,” and said, “[T]his is America. You people need to learn the laws,” and as he left the restaurant, said, “I’m not going to take this. I’m out of here.” Transcript at 32. The witness corroborated claimant’s testimony regarding the 1:48 p.m. group text message, and the witness saw him still standing outside the business when the message was sent. Transcript at 32-33.

In weighing this evidence, the accounts are consistent on some points, such as that DT and claimant argued about scheduling matters, claimant walked away from the initial argument, another argument ensued about claimant alleging that DT was talking about him to other employees, and this caused claimant to leave the restaurant. Notably, the account of the employee witness did not include claimant stating, “I quit,” “I will not come back,” or anything else to that effect, and did not include DT telling claimant to “[j]ust go home,” or something similar. Furthermore, DT’s email to claimant stating, “As you walked out of your shift today, we have to terminate your employment effective immediately” appears inconsistent with DT’s testimony that as claimant left he stated that he “quit” and would not “come back,” as well as the testimony that DT did not know if claimant had actually quit work until he failed to appear for his next scheduled shift. Therefore, the weight of the evidence supports that claimant did not say anything when leaving the restaurant that objectively indicated that he was ending the employment relationship, as opposed to merely indicating that he was leaving the restaurant for the day, and supports that both parties understood the employment relationship had not ended at that point.

The record shows that, more likely than not, claimant was willing to continue working for the employer as of the afternoon of January 10, 2026, but that the employer was unwilling to allow claimant to continue to work after 5:40 p.m. that day, when the email was sent “terminat[ing]” claimant’s employment “effective immediately.” Accordingly, the work separation was a discharge that occurred on January 10, 2026.

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 employer discharged claimant due to leaving the restaurant for the day shortly after the beginning of his shift on January 10, 2026. The employer expected their employees to stay for the duration of their scheduled shifts unless excused, and it is reasonable to infer that claimant understood this expectation. Claimant did not dispute that he left work shortly after his shift began, but explained that it was motivated by his belief that DT was talking about him to two other employees, and that DT told claimant to “[j]ust go home then” in response to claimant threatening to leave if DT did not stop talking about him. Transcript at 47. As discussed above, claimant’s testimony that DT told him to “[j]ust go home then” stands in contrast to the testimony of the two other witnesses present, and therefore was rebutted by a preponderance of the evidence. Therefore, more likely than not, claimant left work without being excused, and did so with indifference to the consequences of his actions and the employer’s interest, knowing that it would probably result in a violation of the employer’s policy. Accordingly, claimant violated the policy with at least wanton negligence.¹

However, 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). 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).

Claimant’s conduct on January 10, 2026 did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant’s conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Nor did claimant’s conduct otherwise make a continued employment relationship impossible, as it did not, for example, impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. Therefore, whether claimant’s conduct on that occasion can be excused as an isolated instance of poor judgment turns on whether it was a single or infrequent occurrence, rather than a repeated act or part of a pattern of other willful or wantonly negligent behavior.

DT’s email discharging claimant asserted, regarding claimant having left before the end of his shift on January 10, 2026, that it was “not the first time this has happened.” Additionally, DT’s wife testified regarding an incident in which she alleged claimant and another employee closed the restaurant early without the employer’s permission or knowledge, but the witness was not permitted to complete her testimony regarding that incident, and claimant was not permitted to cross-examine her on that subject.²

¹ Even if the evidence had shown that DT told claimant to “[j]ust go home then,” by claimant’s account it would not have been a matter of the employer voluntarily excusing claimant from work for the day, but was said only in response to claimant’s demand that DT stop discussing a scheduling matter that involved all three employees, which would have violated a standard of behavior that an employer has the right to expect of an employee.

² This witness also testified that on January 1, 2026, claimant requested to leave work early due to illness and was given permission to do so, and claimant gave similar testimony regarding that incident. Transcript at 27, 59-61. The record as presently developed does not suggest that a willful or wantonly negligent violation of a reasonable employer expectation occurred regarding that incident.

Transcript at 26-28. The record therefore suggests that the January 10, 2026 incident may not have been isolated, and that further development of the record is needed.

On remand, inquiry should be made as to whether claimant willfully or with wanton negligence violated employer policies on other occasions under circumstances that would show that the January 10, 2026 incident was not isolated. The incident in which claimant and another employee allegedly closed the restaurant without permission should be addressed as part of that inquiry.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 26-UI-331366 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-331366 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 27, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-331366 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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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