

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0611

Reversed
Disqualification

PROCEDURAL HISTORY: On May 20, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving unemployment insurance benefits effective March 8, 2026 (decision # L0017682032).¹ Claimant filed a timely request for hearing. On June 8, 2026, ALJ Bender conducted a hearing, and on June 12, 2026, issued Order No. 26-UI-332676, reversing decision # L0017682032 by concluding that the employer discharged claimant, but not for misconduct, and claimant therefore was not disqualified from receiving benefits based on the work separation. On June 22, 2026, the employer filed an application for review with the Employment Appeals Board.

WRITTEN ARGUMENT: The employer 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). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Autozoners, LLC employed claimant from December 15, 2025 until March 12, 2026. The employer employed claimant as a "hub" driver, an employee who used the employer's vehicles to transport inventory between warehouses and stores within one of the employer's distribution hubs. Audio Record at 14:38.

¹ Decision # L0017682032 stated that claimant was denied benefits from March 8, 2026 to October 3, 2026. However, decision # L0017682032 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.

(2) The employer prohibited hub drivers from exceeding the speed limit by more than 11 miles per hour when driving the employer's vehicles. Claimant understood this policy as it was contained in the employer's policy manual, which claimant acknowledged receiving on December 17, 2025.

(3) The employer's vehicles were equipped with a telematics system that tracked their speed and alerted the employer when they were driven more than seven miles per hour over the posted speed limit. Claimant felt pressure to drive the employer's vehicles fast because his direct supervisor often urged him to complete deliveries more promptly or would complain that his loading times took too long.

(4) On December 20, 2025, claimant violated the employer's policy by exceeding the speed limit by more than 11 miles per hour. On December 31, 2025, claimant again violated the employer's policy by exceeding the speed limit by more than 11 miles per hour. On those occasions, claimant drove with the flow of traffic for the most part and was unaware he was speeding, although at times he did try to drive faster and "put it very close to whatever [the] speed limits were." Audio Record at 23:16. The vehicle's speedometer was visible and in working condition on those occasions, but claimant did not use it to moderate his speed. On both dates, claimant received a written warning for violating the employer's speeding policy, and the employer discussed the policy with claimant.

(5) On January 17, 2026, claimant violated the employer's policy by exceeding the speed limit by more than 11 miles per hour. On January 23, 2026, claimant again violated the employer's policy by exceeding the speed limit by more than 11 miles per hour. On those occasions, claimant drove with the flow of traffic for the most part and was unaware he was speeding, although at times he did try to drive faster. The vehicle's speedometer was visible and in working condition on those occasions, but claimant did not use it to moderate his speed. On both dates, the employer issued written warnings to claimant for violating the speeding policy, and claimant received at least one of these warnings.

(6) On March 3, 2026, claimant was driving one of the employer's vehicles and exceeded the speed limit by 14 miles per hour. Although the vehicle had a speedometer that showed the excessive speed, claimant was driving with the flow of traffic and was not aware that he was speeding. The vehicle's speedometer was visible and in working condition, but claimant did not use it to moderate his speed. Claimant found the speedometer difficult to follow at times because it was located next to a menu screen that would alert when the vehicle needed to be serviced.

(7) On March 12, 2026, the employer discharged claimant for violating their policy on March 3, 2026 by exceeding the speed limit by more than 11 miles per hour on that date.

CONCLUSIONS AND REASON: The employer discharged claimant 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 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 order under review concluded that the employer discharged claimant, but not for misconduct, because when claimant violated the employer’s speeding policy on March 3, 2026, he did not do so willfully or with wanton negligence. Order No. 26-UI-332676 at 3. The record does not support this conclusion. The record shows that claimant violated the employer’s speeding policy with wanton negligence.

On March 3, 2026, claimant violated the employer’s policy by exceeding the speed limit by 14 miles per hour. Claimant acted consciously, deliberately driving the employer’s vehicle with the flow of traffic and with a speedometer that showed his speed, but exceeding the speed limit nonetheless. By failing to use the speedometer to pay attention to his speed and ensure that he did not exceed the speed limit, claimant acted with indifference to the consequences of his actions. Claimant knew or should have known that his actions would probably result in a violation, as the speeding policy was contained in the employer’s policy manual, which claimant acknowledged receiving on December 17, 2025. Moreover, claimant also had several previous written warnings for violating the policy. Thus, as claimant acted consciously, with indifference to the consequences of his actions and in a manner that he knew or should have known would probably result in a violation, claimant violated the employer’s prohibition on speeding with wanton negligence on March 3, 2026.

The fact that claimant felt pressure to drive the employer’s vehicles fast because his direct supervisor often urged him to complete deliveries more promptly, or would complain that his loading times took too long, does not change the analysis. It is reasonable to interpret the supervisor’s complaints as intended to motivate claimant to complete deliveries more promptly without violating the prohibition on speeding, perhaps by loading and unloading inventory more quickly. Likewise, although claimant found it difficult to follow the speedometer at times because it was located next to a menu screen that would alert when the vehicle needed to be serviced, claimant did not dispute the employer’s testimony that the speedometer was visible and in good working order. Audio Record at 25:56. As a driver, it was incumbent upon claimant to focus on the speedometer and ignore any distracting information from the menu screen.

Claimant’s wantonly negligent violation on March 3, 2026 was not an isolated instance of poor judgment because it was not a single or infrequent occurrence, but rather was a repeated act or pattern of other willful or wantonly negligent behavior. This is so because claimant violated the employer’s prohibition on speeding with wanton negligence on December 20 and December 31, 2025, and on January 17 and January 23, 2026. On each of these occasions, claimant drove with the flow of traffic for

the most part. The vehicle's speedometer was visible and in working condition on those occasions, but claimant did not use it to moderate his speed. Thus, just as was the case on March 3, 2026, claimant violated the prohibition on speeding with wanton negligence on each of these occasions. Claimant acted consciously, deliberately driving the employer's vehicle with the flow of traffic and with a speedometer that showed his speed, but exceeding the speed limit anyway; claimant failed to pay attention to the speedometer and so was indifferent to the consequences of his actions; and claimant knew or should have known that his behavior probably would result in a violation of the employer's expectations, given that the speeding policy was contained in the employer's policy manual, which claimant acknowledged receiving on December 17, 2025. Accordingly, claimant's wantonly negligent violation on March 3, 2026 was a repeated act or pattern of other willful or wantonly negligent behavior, and was not an isolated instance of poor judgment.

For these reasons, the employer discharged claimant for misconduct connected with work. Claimant therefore is disqualified from receiving unemployment insurance benefits effective March 8, 2026.

DECISION: Order No. 26-UI-332676 is set aside, as outlined above.

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

DATE of Service: July 31, 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.

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