

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0612

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 18, 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 effective April 5, 2026 (decision # L0017677584).¹ Claimant filed a timely request for hearing. On June 3, 2026, ALJ Hall conducted a hearing, and on June 11, 2026 issued Order No. 26-UI-332612, reversing decision # L0017677584 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation. On June 22, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Timber Town Living, Inc. employed claimant as a medication technician and caregiver at their residential care facility from June 29, 2025 through April 6, 2026.

(2) The employer expected their employees to not use foul language in the workplace, and to refrain from directing it at residents, which the employer considered to be verbal abuse of residents. Claimant understood this expectation.

(3) On January 13, 2026, the employer warned claimant regarding recent concerns about her performance. These included an incident where claimant wrote in a resident's chart that they were "being difficult and a handful and just plain rude," and, on another occasion, claimant stated within the hearing of residents and other employees, "I can't deal with this right now." Transcript at 11. Claimant admitted to the employer to being "frustrated" and "mak[ing] bad choices" regarding these incidents. Transcript at 11. Thereafter, claimant accepted a transfer to another building within the facility that the parties believed would be a less stressful work environment for claimant.

¹ Decision # L0017677584 stated that claimant was denied benefits from April 5, 2026 to April 17, 2027. However, decision # L0017677584 should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 5, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

(4) On February 16, 2026, claimant “was spoken to about verbal outbursts regarding her ability to keep composure and having an elevated tone and exacerbated mannerisms,” and demoted from her role as a medication technician to that of a caregiver “for failure to remain professional in the workplace and failure to adhere to medication administration policies.” Transcript at 10.

(5) On April 3, 2026, a resident was “upset” and trying to leave the facility while yelling and using foul language. Transcript at 8. In response, claimant said to the resident, “Get your ass to your room. I’m not going to tolerate you treating my caregivers like this. Get out of my dining room. Get out of my dining room.” Transcript at 8. In response to a complaint from another employee, the employer reviewed surveillance video of the incident.

(6) On April 6, 2026, the employer discharged claimant based on the April 3, 2026 incident, as they considered claimant having directed foul language toward the resident to be verbal abuse. The employer reported the incident to state authorities as a suspected instance of abuse, and the investigation into that report was still pending as of the June 3, 2026 hearing in this matter.

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). Mere inefficiency resulting from lack of job skills or experience is not misconduct. OAR 471-030-0038(3)(b).

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 employer discharged claimant for having used foul language toward a resident on April 3, 2026. The employer reasonably expected that their employees would not use foul language in the workplace or direct it toward residents. Claimant testified that she did not recall being advised of such a policy by the employer, but understood that use of foul language in such situations was not considered “professional” in the caregiving industry, and could be viewed as “abuse.” Transcript at 18, 20. Claimant did not dispute that she made the statements toward the resident as alleged by the employer.

While the resident's behavior was understandably frustrating to claimant, claimant had recently been reminded of the need to keep her composure and maintain professional communications with others. As such, it is more likely than not that claimant acted consciously in responding harshly to the resident, using foul language, and knew or should have known that her actions would probably result in a violation of the employer's policies. Therefore, claimant violated the employer's policy with wanton negligence.

However, isolated instances of poor judgment are not misconduct. Claimant's conduct did not violate the law, nor was it tantamount to unlawful conduct.² 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 impede any essential aspect of the relationship or threaten its continued existence, and had not exposed the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. Therefore, claimant's conduct did not exceed mere poor judgment, and whether it 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.

Claimant was disciplined in January and February 2026. When asked for details regarding specific incidents leading to the January 2026 discipline, the employer's witness testified that claimant had written in a resident's chart that they were "being difficult and a handful and just plain rude," and on another occasion, claimant stated within the hearing of residents and other employees, "I can't deal with this right now." Transcript at 11. The record fails to show that claimant knew or should have known that either of these actions violated the employer's expectations when they occurred, and therefore that she was acting with at least wanton negligence.

When asked for details regarding the February 2026 discipline, the employer's witness testified it was in response to complaints that she had "verbal outbursts" and had could not "keep [her] composure" in stressful situations, as well as concerns about her professionalism and "failure to adhere to medication administration policies." Transcript at 10. When asked, "In any of the events leading to the January 13 and the February 16 conversations. . . did Claimant allegedly use foul language in any of those instances?" the witness responded, "Yes," but did not provide any details regarding those alleged instances. Transcript at 10. Furthermore, the witness testified that the employer had a "zero tolerance policy" regarding how claimant spoke to the resident on April 3, 2026, which suggests that the employer had not suspected claimant of conduct similar to that incident in the past, including regarding the events leading to the January and February 2026 disciplinary actions, as she was not discharged at those times. Transcript at 14.

In considering this evidence, the employer has not shown with respect to any specific incident prior to April 3, 2026 that claimant willfully or with wanton negligence violated a reasonable employer policy. To the extent claimant did not meet the employer's expectations regarding charting, dealing with other staff in a professional manner, or medication administration, the record suggests that these issues were

² Although an investigation by state authorities into the matter was pending at the time of the hearing, the record suggests that the investigation pertained only to claimant's fitness to continue working in the industry, and not whether a violation of criminal law had occurred. The employer's witness also testified that she believed the allegation could only be substantiated against claimant, "[n]ot against the facility." Transcript at 14.

attributable to inefficiency resulting from lack of job skills. To the extent the employer alleged prior violations of their policy against the use of foul language, they failed to meet their burden to show that claimant consciously used foul language with disregard for the consequences of her actions, as the record lacks any detailed account of those alleged violations. Accordingly, the record shows that the April 3, 2026 violation was a single or infrequent occurrence of willful or wantonly negligent conduct, and was therefore an isolated instance of poor judgment, which is not misconduct.

For these reasons, claimant 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-332612 is affirmed.

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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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