

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0615

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 15, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and claimant therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0017630430). The employer filed a timely request for hearing. On June 16, 2026, ALJ Krueger conducted a hearing and issued Order No. 26-UI-332974, reversing decision # L0017630430 by concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective March 8, 2026. On June 24, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Seven Feathers Hotel & Casino Resort Corporation employed claimant as a restaurant server from November 17, 2005 until March 13, 2026.

(2) The employer expected their employees to smoke or vape in designated areas only. Claimant understood this policy. During her employment, she had signed and received a copy of an employee handbook that contained the policy.

(3) The employer provided a “smoking shack” or “barn” along with a surrounding outside area for employees to smoke or vape. Audio Record at 10:22, 15:25. Employees were prohibited from smoking or vaping in the employer’s kitchen, or in the kitchen’s “side station,” an area where non-food items were stored. Audio Record at 16:04. Claimant knew that smoking or vaping in the side station was prohibited.

(4) On February 24, 2026, claimant was in the side station with her vaping device in her pocket. On that date, claimant took the device from her pocket and inhaled vapor from the device.

(5) On February 25, 2026, claimant was again in the side station with her vaping device in her pocket. On that date, claimant again took the device from her pocket and took an inhalation of vapor.

(6) The employer reviewed camera footage and became aware of claimant's conduct of vaping in the side station on February 24 and 25, 2026. On March 13, 2026, the employer discharged claimant for vaping in an area not designated for vaping on February 24 and 25, 2026.

(7) On the occasions that she vaped in the side station on February 24 and 25, 2026, claimant was experiencing stress and inhaled the vapor from the device as an "absent-minded habit." Audio Record at 17:10. However, when claimant inhaled the vapor from the device, she was aware that she was doing so. Further, on those occasions, claimant carried the vaping device in her pocket when she could have made the device inaccessible while she was in the side station by placing the device in her locker or by her water bottle.

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 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 met their burden to prove that they discharged claimant for misconduct. The employer expected their employees to smoke or vape in designated areas only. Claimant was aware of this policy and knew that the employer prohibited smoking or vaping in the kitchen's side station. Nevertheless, claimant violated the policy on February 24 and 25, 2026, by, on each date, inhaling the vapor from her device while present in the side station.

Although, at hearing, claimant characterized this as an "absent-minded habit," the record is sufficient to conclude that claimant was conscious of her conduct of vaping in the side station. This is the case because claimant was asked if she knew she was using the vaping device when she was doing so on February 24 and 25, 2026, and answered in the affirmative. Audio Record at 22:11 to 22:22 ("Did I know that I was smoking? Yes."). Claimant acted with indifference to the consequences of her actions because, although stress may have caused her to desire to vape spontaneously while present on those occasions in the side station, she chose to carry the vaping device in her pocket when she could have

made the device inaccessible while she was in the side station. Claimant knew or should have known that her conduct on February 24 and 25, 2026 would probably result in a violation of the employer's expectations because claimant understood that smoking or vaping in the kitchen's side station was prohibited. Thus, claimant's conduct on February 24 and 25, 2026 were wantonly negligent violations of the employer's expectations.

Claimant's wantonly negligent conduct was not an isolated instance of poor judgment because it was a repeated act or pattern rather than a single or infrequent occurrence. Here, claimant's wantonly negligent violations occurred on separate days—first on February 24, 2026, and then on February 25, 2026—with each violation constituting a distinct occurrence in the employment relationship. Accordingly, claimant's policy violations on February 24 and 25, 2026 were repeated wantonly negligent acts and therefore were not isolated.

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

DECISION: Order No. 26-UI-332974 is affirmed.

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

DATE of Service: August 3, 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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