

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0637

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 1, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits from April 5, 2026 to April 3, 2027 (decision # L0017326046). Claimant filed a timely request for hearing. On June 1 and 17, 2026, ALJ Frank conducted a hearing, and on June 25, 2026 issued Order No. 26-UI-333588, modifying decision # L0017326046 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective March 29, 2026 and until requalified.¹ On July 6, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) Map Communications, Inc. employed claimant as a customer service representative from October 21, 2022 through April 2, 2026.

(2) Claimant worked from home answering customer calls from a queue through an employer-provided computer. When no calls were in the queue, claimant was to work on support tickets submitted by other means, such as email. The employer set a minimum expectation for the number of support cases employees should complete over certain time intervals, and claimant regularly exceeded this expectation.

¹ Although Order No. 26-UI-333588 stated it affirmed decision # L0017326046, it modified that decision by changing the beginning date of the disqualification from April 5, 2026 to March 29, 2026. Order No. 26-UI-333588 at 4.

(3) Additionally, the employer had a written policy prohibiting “[w]ork avoidance” which gave several examples of prohibited conduct such as making it appear through various means that a customer call was in progress when it was not, “sleeping or malingering on the job,” or engaging in “excessive personal phone calls.” June 1, 2026 Transcript at 6. Claimant generally understood the employer’s policies to prohibit engaging in personal pursuits during work hours.

(4) In 2025, the employer acquired and integrated into the business another customer service company and its employees. By early 2026, the employer had noticed a significant discrepancy in productivity between the highest and lowest performers in the combined pool of employees, and wanted to determine the cause. The employer utilized a software program capable of logging every moment of an employee’s work computer use throughout the day and decided that for each employee they would fully audit the activity log for three randomly selected workdays. In claimant’s case, the days selected were February 10, 13, and 16, 2026.

(5) In 2025, claimant had been given permission to reduce her work hours from full time to part time to pursue education in massage therapy. On February 9, 2026, claimant’s supervisor told claimant that the employer intended to rescind the permission for part-time work based on scheduling needs, which led claimant to believe that her employment would be ending. Shortly thereafter, the employer sent claimant an email stating that they did not intend to rescind her part-time status, but claimant did not read the email until March 2026.

(6) The audit of claimant’s work computer use for February 10, 13, and 16, 2026 showed that accounting for lunch and scheduled breaks, claimant engaged in work activities for only portions of those shifts. Interspersed throughout each shift were extended periods of complete inactivity; use of social media, personal interest, and shopping websites; drafting of Valentine’s Day messages to claimant’s husband; and use of an artificial intelligence (AI) chatbot with queries regarding topics such as starting a massage business and qualifying for unemployment insurance benefits. The employer believed that these actions violated their “work avoidance” policy.

(7) On April 2, 2026, after completing the audit of all employees’ computer usage logs, claimant and several other employees were discharged based on the results of the audit.

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 discharged claimant based on an audit of her work activity for February 10, 13, and 16, 2026, which showed that she was not engaged in work activities for substantial portions of each shift. The employer reasonably prohibited “work avoidance” activities such as engaging in personal pursuits during work hours, and claimant understood this expectation. Claimant did not dispute that the logs of her computer use for the three days audited were accurate. It is reasonable to infer that claimant acted consciously in absenting herself from the computer or using it for purely personal activities; that she knew or should have known that doing so would likely result in a violation of the employer’s expectations; and that she was acting with disregard for the consequences of her actions and of the employer’s interests. Therefore, claimant violated the employer’s policy with at least wanton negligence.

Claimant’s actions 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 was not likely to reoccur once claimant learned the extent of the employer’s monitoring capabilities, did not 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. The record does not show that claimant was suspected of other policy violations during her employment. Therefore, whether claimant’s actions on February 10, 13, and 16, 2026 can be excused as an isolated instance of poor judgment turns on whether they can be considered a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

At hearing, claimant advanced two main points in support of excusing her conduct. First, claimant asserted that the time period audited was unrepresentative of her years of work for the employer, explaining that, following the February 9, 2026 conversation with her supervisor regarding the possible end of part-time work, she was “incredibly anxious,” and “uncertainty around [her] job led [her] to not make the best decisions in that exact moment.” June 17, 2026 Transcript at 9. Second, claimant asserted that she continuously exceeded the employer’s expectations regarding the number of support cases handled, suggesting that this measure of productivity was a more important consideration than whether she was actually working during all of the hours for which she was paid. These factors do not merit excusing claimant’s conduct as isolated. Even if claimant only engaged in personal pursuits during her shifts from February 10, 2026 until she learned in March 2026 that the employer intended to continue allowing her to work part time, or just the three workdays within that period the employer randomly selected to audit, the frequency with which claimant was off-task over those three days is alone sufficient to demonstrate that it was repeated conduct, and not a single or infrequent occurrence. Further, claimant’s ability to continuously meet or exceed one of the employer’s productivity expectations while

repeatedly violating another with wanton negligence does not excuse the violation from being considered misconduct. Therefore, claimant's actions were not isolated and cannot be excused as an isolated instance of poor judgement. Accordingly, claimant was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving benefits effective March 29, 2026.

DECISION: Order No. 26-UI-333588 is affirmed.

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

DATE of Service: August 14, 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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