

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0641

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 11, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy, and therefore was not disqualified from receiving benefits based on the work separation (decision # L0016585788). The employer filed a timely request for hearing. On June 11, 2026, ALJ Hall conducted a hearing, and on June 18, 2026 issued Order No. 26-UI-333163, affirming decision # L0016585788. On July 8, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer’s written argument because they 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).

FINDINGS OF FACT: (1) MHC Property Management, LP employed claimant as a housekeeper at their campground from May 9, 2025 through January 26, 2026. Like most of the staff, claimant lived in a recreational vehicle (RV) at the employer’s campsite while she was working for the employer.

(2) The employer maintained a written policy governing the use of alcohol, cannabis, and drugs. In relevant part, that policy prohibited “[w]orking under the influence of illegal drugs, controlled substances, or alcohol, [or] [p]ossessing or consuming alcohol on the company premises at any time other than company sanctioned events.” Transcript at 6. The policy did not define what it meant to be “under the influence of” alcohol. This policy was contained in the employee handbook, which claimant was required to read and sign during her initial training. However, claimant did not have time to read the entire handbook during the training, and was only passingly familiar with the policy. Claimant understood the employer to permit employees to store and consume alcohol within their own residences onsite while they were not working, so long as they did not report to work under the influence of alcohol. The employer’s property manager also construed the policy this way.

(3) On some occasions during her employment, claimant would take shots of liquor on her lunch breaks, within the confines of her residence. At the time, claimant and other employees typically took longer lunch breaks, lasting up to two hours. Claimant never returned back to work intoxicated.

(4) On the morning of January 26, 2026, the property manager received reports from two employees indicating that claimant had smelled “strongly of fresh alcohol” when they interacted with claimant on January 25, 2026. Transcript at 10–11. The employees did not indicate to the manager what time on January 25, 2026 they had interacted with claimant. The employees also did not indicate that claimant had caused any damage to the employer’s property, that she had any issues completing her work duties that day, or that she had engaged in any unusual behavior.

(5) The manager subsequently spoke to claimant about the matter. During the meeting, claimant admitted that she had, on previous occasions, taken shots of liquor on her lunch breaks, but explained that she had never been intoxicated while working. Claimant did not tell the manager that she had consumed any alcohol on her lunch break on January 25, 2026. The manager did not observe any signs of intoxication in claimant during the meeting, and therefore did not administer or order a test to determine claimant’s blood alcohol level.

(6) Based on claimant’s admission that she sometimes took shots of liquor on her lunch breaks, the manager “assumed” that claimant had done the same on January 25, 2026. Transcript at 13. After the meeting, the manager reported her findings to the employer’s human resources (HR) department, who then instructed the manager to discharge claimant. On January 26, 2026, the employer discharged claimant because they believed she had consumed alcohol on her lunch break on January 25, 2026.

(7) Claimant had no prior disciplinary history with the employer.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for a disqualifying act.

A claimant is disqualified from receiving benefits if they have committed a disqualifying act as described in ORS 657.176(8) or (9). ORS 657.176(2)(h). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;

* * *

(D) Is under the influence of intoxicants while performing services for the employer[.]

* * *

OAR 471-030-0125 (January 11, 2018) states:

* * *

(2) Definitions. For the purposes of this rule:

(a) For purposes of ORS 657.176(9), “workplace” means the employer's premises or any place at or in which an individual performs services for the employer or otherwise acts within the course and scope of employment.

* * *

(c) For purposes of ORS 657.176(9) and 657.176(13), an individual is “under the influence” of intoxicants if, at the time of a test administered in accordance with the provisions of an employer’s reasonable written policy or collective bargaining agreement, the individual has any detectable level of drugs, cannabis, or alcohol present in the individual's system, unless the employer otherwise specifies particular levels of drugs, cannabis, or alcohol in its policy or collective bargaining agreement.

(d) “Performing services for the employer” as used in ORS 657.176(9) and “during work” as used in ORS 657.176(9) mean that an employee is on duty and is, or is expected to be, actively engaged in tasks as directed or expected by the employer for which the employee will or expects to be compensated with remuneration.

* * *

(6) For purposes of ORS 657.176(9), (10), and (13), no employer policy is reasonable if the employer does not follow their own policy.

The employer discharged claimant because they believed she had consumed alcohol on her lunch break on January 25, 2026, an alleged violation of their policy which prohibited, in relevant part, “[w]orking under the influence of illegal drugs, controlled substances, or alcohol, [or] [p]ossessing or consuming alcohol on the company premises at any time other than company sanctioned events.” As this was the incident for which claimant was discharged, it is considered the proximate cause of her discharge and therefore the proper focus of the analysis in this matter.¹

As a preliminary matter, the employer does not appear to have followed their own policy in this instance. The policy contains no apparent exceptions for the possession or consumption of alcohol on the employer’s premises within the confines of an employee’s personal onsite residence. Despite this, the property manager testified, “[The policy] does not make any exception for people who live on [the employer’s] property. But I want to say that it is my belief that... as adults we are allowed to consume alcohol inside of our RVs and in... our campsites, our personal campsites. I have never heard that we... are not allowed to.” Transcript at 29. Thus, the employer arguably did not follow its own policy by reading into the policy an unwritten exception to its general prohibition. To the extent that they did not follow their own policy in this regard, the policy is not considered to be “reasonable” under OAR 471-030-0125(6).

¹ See e.g. *Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

Even if the policy was reasonable, however, the employer has not met their burden to show that claimant violated it. In fact, the record contains little evidence to show that claimant consumed alcohol, or was otherwise intoxicated, while working on January 25, 2026. That evidence consists primarily of two reports to the property manager on January 26, 2026 that claimant had smelled of “fresh alcohol” at an unspecified point during the previous day, and claimant’s admission that she sometimes took shots of liquor on her lunch breaks. During the January 26, 2026 meeting, the manager did not observe claimant to be exhibiting signs of intoxication, and did not require claimant to take a blood alcohol test. It can be reasonably inferred that the manager also did not personally witness claimant exhibiting signs of intoxication on January 25, 2026, as she appeared to have relied on the statements from the other employees. Likewise, claimant did not tell the manager that she had consumed any alcohol on her lunch break on January 25, 2026.

At hearing, claimant admitted that she could not clearly recall her January 25, 2026 shift. Transcript at 17. However, claimant testified that because the employer’s business was very slow during the winter, she believed she had left work early without a lunch break that day, as she sometimes did. Transcript at 17. In support of this belief, claimant read into the record a text message she had sent to her husband at 12:12 p.m. on January 25, 2026, which stated, “Be headed home here in a few.” Transcript at 24. Given the time at which she sent that text message and the lack of evidence to the contrary, the record shows that claimant, more likely than not, went home early without taking a lunch break. Further, claimant testified that she never consumed alcohol while on the clock. Transcript at 17. The employer did not rebut this assertion.

In sum, the preponderance of the evidence does not show that claimant consumed alcohol on January 25, 2026, either during or immediately prior to any portion of her shift that day. As such, the employer has not met their burden to show that she violated their policy’s prohibition on possessing, consuming, or being under the influence of alcohol while working that day. Therefore, claimant was discharged, but not for a disqualifying act, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-333163 is affirmed.

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

DATE of Service: August 13, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>. If

you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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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