

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0644

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 8, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and therefore was not disqualified from receiving benefits based on the discharge (decision # L0017451164). The employer filed a timely request for hearing. On June 23, 2026, ALJ Murdock conducted a hearing, and on June 25, 2026 issued Order No. 26-UI-333615, affirming decision # L0017451164. On July 9, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) McMenamin's, Inc. employed claimant as a line cook at one of their restaurants from October 11, 2024 until March 5, 2026.

(2) The employer expected their employees to work their scheduled shifts and arrive to their work shifts on time. If an employee called out sick for three or more shifts consecutively, the employer required them to submit a doctor's note excusing them from work on the days of the missed shifts. The employer expected employees to refrain from submitting falsified doctor's notes.

(3) Claimant was absent from or late to his scheduled shifts on numerous occasions in November and December 2025. On December 19, 2025, the employer placed claimant on a final written warning based on these incidents.

(4) On February 21, 22, 26, and 27, 2026, claimant called out sick from his scheduled work shifts.

(5) On or about February 27, 2026, claimant provided a doctor's note to the employer. The note excused claimant from work from February 21 through February 27, 2026. The employer thought the note was suspicious because it excused claimant from work for those dates in late February 2026, but had an encounter date of January 9, 2026.

(6) Based upon the suspicion that the doctor's note was falsified, the general manager called the healthcare system for whom the doctor worked, and spoke to a scheduler. The scheduler said they were "not allowed to release . . . records" but "they had no record of a visit or a doctor's note being issued." Transcript at 19-20. The scheduler told the manager that "they could not verify that [claimant] had been to the doctor or he had been issued a note." Transcript at 20. The scheduler told him that claimant's last appointment was in June 2025. The scheduler also told the general manager that the encounter date meant the date of "contact with the doctor." Transcript at 28.

(7) The general manager asked claimant about the note and the information regarding having no record of a visit from claimant since June 2025. Claimant denied that the doctor's note was falsified and stated that the information regarding the healthcare system having no record of a visit from him since June 2025 was untrue.

(8) On or about March 2, 2026, the general manager sent the healthcare system an email requesting they verify the authenticity of the doctor's note. On March 2, 2026, the healthcare system sent the general manager an email in response to his inquiry. The email advised that the healthcare system would respond to the employer's request in the same manner it responded to requests made by attorneys, courts, and government agencies. The email explained that the healthcare system would disclose the records via a secure email containing the documents exported directly from their electronic medical record, which required the employer to send a signed Health Insurance Portability and Accountability Act (HIPAA)-compliant authorization in an email stating that they needed a copy of the note, the date it was created, and by which provider. Exhibit 1 at 1.

(9) On March 5, 2026, the employer discharged claimant. The employer discharged claimant because they believed he engaged in dishonesty by falsifying the doctor's note. Another reason the employer discharged claimant was that they considered claimant to have violated the attendance policy by failing to submit a doctor's note verifying that he was ill on the days he called out from his scheduled shifts in late February 2026.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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).

The main reason the employer discharged claimant was that they believed claimant had been dishonest with them by providing a falsified doctor's note. This is the case because the employer's general manager testified that the employer "put both" the allegedly falsified note and attendance policy

violations “as the terminating factors” when claimant was discharged. Transcript at 18. However, the employer’s belief that claimant submitted a falsified note appears to be the determinative reason for the discharge as the general manager also testified that claimant most likely would not have been discharged if he had submitted a valid doctor’s note. Transcript at 26. As for what specific attendance policy violation was the basis of the discharge, the manager stated that the violation was claimant’s alleged failure to submit a doctor’s note verifying that he was ill on the days he called out from his scheduled shifts in late February 2026. *See* Transcript at 25 (Q: Um, what was – what specifically was [sic] the attendance violations that were considered for discharge? A: That there was no, um, there was not a doctor’s note releasing him back to work for the three days that were missed prior.).

It therefore appears that the proximate cause of claimant’s discharge was the employer’s belief that claimant had engaged in dishonesty by submitting a falsified doctor’s note.¹ However, both as to allegedly submitting a falsified note and allegedly engaging in an attendance policy violation by failing to submit a note verifying that he was ill on the days he called out in late February 2026, the employer did not meet their burden to prove that they discharged claimant for misconduct.

The employer did not prove by a preponderance of the evidence that the note was falsified. For his part, when confronted by the general manager, claimant denied that the note was falsified and stated that the information regarding the healthcare system having no record of a visit from him since June 2025 was untrue. This is to be balanced against the fact that the majority of the information the employer offered to support their assertion that the note was not authentic, such as that the healthcare system had no record of a doctor’s note being issued and the last appointment claimant had was in June 2025, was hearsay information allegedly conveyed by the healthcare system’s scheduler to the general manager during a phone call. The reliability of this information is questionable. Documentary evidence shows that the healthcare system had a secure email process in place for inquiries into the verification of a clinician’s note, which required the employer to send a signed HIPAA-compliant authorization and other information. Exhibit 1 at 1. The rigor of this process suggests that the scheduler was not at liberty to provide information to the general manager relating to when claimant’s last appointment was and whether they had a record of a note being issued, and that any such information provided in the call between the scheduler and general manager was unauthorized and untrustworthy.

Certain timing aspects of the note may have raised suspicions, given that the note excused claimant from work from February 21 through February 27, 2026, but listed an encounter date of January 9, 2026. However, it is possible that the term “encounter date” was meant to convey something other than the date when the actual doctor’s appointment occurred. The meaning of the term is not self-evident, and the employer arrived at the conclusion that the term meant the date claimant had contact with the doctor based on information provided by the scheduler, which, as discussed above, was a questionable source. Further, even if the term was meant to convey the date that the actual doctor’s appointment occurred, it is possible that January 9, 2026 was listed in error due to a clerical mistake.

When the foregoing evidence of alleged falsification is weighed against claimant’s denial, it is at least as likely that the note was authentic and therefore the employer failed to show that the note was falsified.

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).

Accordingly, the employer did not meet their burden to prove that they discharged claimant for misconduct based on his allegedly having submitted a falsified doctor's note.

As to discharging claimant for the attendance policy violation of failing to submit a doctor's note verifying that he was ill on the days he called out from his scheduled shifts in late February 2026, the employer similarly failed to prove that they discharged claimant for misconduct. The record shows that on or about February 27, 2026, claimant provided a doctor's note to the employer. The note excused claimant from work from February 21 through February 27, 2026. As discussed above, it was just as likely that this note was authentic as was the probability that it was falsified. As such, the employer did not meet their burden to prove that claimant failed to submit a valid doctor's note verifying that he was ill on the days he called out from his scheduled shifts in late February 2026. To the extent the employer discharged claimant for failing to submit a valid note excusing the February 2026 absences, they did not prove they discharged him for misconduct.

For these reasons, the employer discharged claimant, but not for misconduct. Claimant is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 26-UI-333615 is affirmed.

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

DATE of Service: August 21, 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 باتباع 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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