

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0645

Reversed
Disqualification

PROCEDURAL HISTORY: On June 1, 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 was therefore not disqualified from receiving benefits based on the discharge (decision # L0017721753). The employer filed a timely request for hearing. On June 30, 2026, ALJ Wahl conducted a hearing at which claimant failed to appear, and on July 6, 2026 issued Order No. 26-UI-334330, affirming decision # L0017721753. On July 10, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of documents submitted by the employer to the Office of Administrative Hearings (OAH) while the record remained open for that purpose, but which were not received, as well as a statement from the employer explaining these circumstances. The documents have been marked as EAB Exhibit 1 and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) The Purlin Mill, LLC employed claimant as a machine operator from September 21, 2022 through March 25, 2026.

(2) The employer expected their employees to report for work on time and remain through the scheduled end of their shift unless excused. Claimant was aware of this expectation.

(3) On March 19, 2025, the employer issued claimant a warning regarding his attendance after he was late or absent three times between January 1 and March 19, 2025. Thereafter, claimant was late for work on May 2 and 9, 2025, and absent on May 27 and July 29, 2025. On August 11, 2025, the employer issued claimant another warning regarding his attendance, among other issues.

(4) Following the August 11, 2025 warning, claimant was absent from work on September 15, October 15, and December 31, 2025, and was late for work on October 28, 2025 and February 8, 2026.

(5) On March 25, 2026, claimant was scheduled to work until 3:30 p.m. At approximately 11:15 a.m., claimant got into an argument with a coworker who accused claimant of throwing away his food. During the argument, claimant challenged the coworker to fight him and the coworker declined. Claimant then left the workplace without seeking permission from management.

(6) At 1:51 p.m., the employer spoke with claimant by phone and asked if he would be returning to work, and claimant replied that he intended to run errands for the rest of the day. The employer told claimant that they would consider him to have quit work if he did not return prior to the scheduled end of his shift. Claimant then agreed to return to work.

(7) That afternoon, claimant reported to the workplace and gave his account of the argument to the employer. The employer then discharged claimant for having left work early without seeking permission, which they considered part of a pattern of attendance and conduct issues.

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 for having left work without permission prior to the end of his March 25, 2026 shift. The employer reasonably expected their employees to report for work on time and remain through the scheduled end of their shift unless excused. It is reasonable to infer that claimant understood this expectation. The order under review concluded that despite claimant understanding this expectation, his leaving work mid-shift without permission was not willful or wantonly negligent. Order No. 26-UI-334330 at 3. The record does not support this conclusion.

Claimant did not participate in the hearing and therefore did not rebut the employer's testimony regarding the circumstances of March 25, 2026. It is reasonable to infer that when claimant left work mid-shift following the argument with a coworker, he did so consciously and with disregard for the consequences of his actions, knowing that it would probably violate the employer's expectation that he remain at work through the end of his shift. Therefore, claimant acted with at least wanton negligence in leaving work prior to the scheduled end of his shift without first seeking permission.

The employer asserted that they decided to discharge claimant, rather than impose lesser discipline, because his conduct on March 25, 2026 "follow[ed] multiple prior occurrences of similar misconduct that have been formally addressed through documented write-ups and discussions." EAB Exhibit 1 at 5. The record shows that following a warning regarding claimant's attendance approximately one year earlier, claimant was unexpectedly late or absent from work on nine occasions. Without evidence to suggest that these violations of the employer's attendance policy were attributable to illness, unavoidable circumstances, or ordinary negligence, their frequency is sufficient to establish that claimant's unauthorized absence on March 25, 2026 was likely not a single or infrequent occurrence, but part of a pattern of other wantonly negligent conduct. Accordingly, claimant's conduct on that occasion cannot be excused as an isolated instance of poor judgment, and his discharge was for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving benefits effective March 22, 2026.

DECISION: Order No. 26-UI-334330 is set aside, as outlined above.

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

DATE of Service: August 18, 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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