

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0647

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 4, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0017352837). The employer filed a timely request for hearing. On June 26, 2026, ALJ Janzen conducted a hearing, and on July 1, 2026 issued Order No. 26-UI-334003, reversing decision # L0017352837 by concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving benefits effective March 1, 2026. On July 10, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.¹

FINDINGS OF FACT: (1) OSL Retail Services, Corp. employed claimant from November 28, 2025 through March 3, 2026. The employer contracted with Walmart to sell prepaid mobile devices at dedicated counters in Walmart stores. Claimant worked in sales at the employer's counter at one such store.²

(2) The employer had a policy which prohibited, in relevant part, "... falsification of incentive program submissions in any form, up to and including for the purpose of personal gain, processing transactions without customers being present, misuse of both [the employer's] and [their] clients' third-party assets and tools, including systems, inventory, materials, monies, etc., and ... sales refund and/or gift card,

¹ Claimant submitted two written arguments: one on July 10, 2026 and another on July 20, 2026. The arguments are different only in that claimant was unable to serve a copy of the July 10, 2026 argument on the employer. Because claimant served the July 20, 2026 argument on the employer, and because the two arguments are otherwise identical, only claimant's July 20, 2026 argument is referred to in this decision.

² The record shows that claimant worked for the employer at three separate Walmart locations but was, for reasons that do not affect the outcome of the decision, moved to other stores twice. The facts relevant to this case are only about claimant's work at the last of these three stores.

credit card fraud, unauthorized use of discounting and transactional modification, unauthorized movement of inventory, processing personal transactions without [a] manager present, and unauthorized creation, adjustment, or modification of an account for yourself, friends, or family members, or other customers.” Transcript at 6. Additionally, employees were not allowed to sell devices to other employees without written approval from management. Claimant was given this policy when he was hired and signed an acknowledgement that he had read it at that time.

(3) In or around February 2026, Walmart and the employer held a promotion in which customers who were eligible to upgrade their telephones could receive a free telephone. Customers eligible for the promotion were only allowed one free phone each. This limitation was posted on signs around the employer’s counter. The employer also explained this limitation to their employees in meetings and training sessions. At some point after the promotion began, claimant and his team lead spoke to the manager of the electronics department at the Walmart where they were working and asked him about restrictions on that promotion. The Walmart manager told them, in relevant part, that “. . . it was up to Walmart discretion on whether they wanted somebody to be able to get more than . . . two phones[.]” Transcript at 19–20.

(4) At some point in or around February 2026, claimant checked the employer’s computer system to see if his own personal account was eligible for an upgrade. When claimant saw that it was eligible, he also found that the system allowed him to process the promotional deal such that he could receive two free phones rather than one. Additionally, claimant found that the upgrade eligibility persisted even after the promotion was redeemed, such that he could take advantage of the deal multiple times. Over the course of multiple shifts, claimant used this glitch to obtain 14 free phones for himself. Claimant’s coworkers processed these transactions for claimant. When doing so, either claimant’s manager or a Walmart manager was always in the general vicinity but was not necessarily involved in the transaction itself. Claimant did not obtain written approval from management for these transactions. Claimant collected all the phones he had obtained over this time period and kept them in a bag at the store.

(5) In mid-February 2026, the employer received a report from the Walmart store manager that claimant had been caught trying to leave the store with the bag of 14 phones. Upon learning this, the employer suspended claimant pending an investigation into the matter. During the investigation, one of the witnesses for Walmart told the employer that “the phones were for customers to purchase, and by this many phones going out the door, they did not have those devices to sell to Walmart customers that were coming in for them.” Transcript at 29. After investigating, the employer concluded that claimant had violated their policy by exploiting the promotion to obtain multiple free phones for himself, via transactions processed without management approval. On March 3, 2026, the employer discharged claimant for that reason.

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 because they concluded that claimant violated their policy by exploiting their upgrade promotion to obtain multiple free phones for himself, via transactions processed without management approval. That policy prohibited, in relevant part, “. . . falsification of incentive program submissions in any form, up to and including for the purpose of personal gain, processing transactions without customers being present, misuse of both [the employer’s] and [their] clients’ third-party assets and tools, including systems, inventory, materials, monies, etc., and . . . sales refund and/or gift card, credit card fraud, unauthorized use of discounting and transactional modification, unauthorized movement of inventory, processing personal transactions without [a] manager present, and unauthorized creation, adjustment, or modification of an account for yourself, friends, or family members, or other customers,” as well as selling devices to other employees without written permission from management. Additionally, according to the terms of the promotion itself, customers were only allowed one free phone each. Claimant’s conduct—obtaining multiple free phones by way of exploiting the employer’s promotion and not obtaining written permission from management before engaging in a transaction with another employee—violated several of the employer’s prohibitions. As claimant acknowledged his receipt of this policy at the time of hire, he at least had reason to know of its requirements.

It should be noted that several of the facts about these transactions are in dispute. It is not necessary to resolve these disputes, however, because the facts, even when construed in claimant’s favor, support the conclusion that claimant was discharged for misconduct. At hearing, claimant asserted that he had not, at the time, believed that he was violating the employer’s policy by obtaining the 14 phones because he “had already gotten previous management approval.” Transcript at 25. He likewise asserted that he was not aware of the one-phone limitation on the upgrade promotion. Transcript at 19. These assertions are implausible.

As to the assertion that claimant had “already gotten previous management approval,” the record shows otherwise. According at least to claimant’s version of events, the Walmart department manager had told claimant and his manager that “. . . it was up to Walmart discretion on whether they wanted somebody to be able to get more than . . . two phones[.]” Even assuming this ambiguous statement to be accurate, the record does not show that claimant sought permission from Walmart to obtain more than two phones for himself. Similarly, the employer’s policy required claimant to obtain *written* permission from the employer’s management for him to engage in an employee-to-employee transaction, and claimant did not do so for these transactions. The record does not show that claimant was prevented from obtaining

suitable permission or had any reasonable basis for believing that he was not required to do so. As such, claimant's failure to obtain suitable permission before taking so many phones for himself was the result of at least wanton negligence.

As to the assertion that claimant was not aware of the promotion's one-phone-per-customer limit, the employer testified that this limitation was explained in promotional materials within the store and was likewise covered in employee meetings and trainings. Transcript at 14–15. Claimant did not rebut this testimony. As such, even if claimant was unaware of the promotion's limitation, he had reason to know of it, and his failure to follow it therefore amounted to at least wanton negligence.

Claimant's conduct cannot be excused as an isolated instance of poor judgment. For one, while the record does not show how many separate transactions claimant engaged in to obtain the 14 phones, it occurred over the course of multiple transactions. As such, claimant's conduct was not isolated. Additionally, by exploiting the employer's promotion to obtain multiple free devices that he had reason to know he was not entitled to, claimant engaged in dishonest, self-dealing conduct. Under such circumstances, a reasonable employer would construe this as an irreparable breach of trust, such that a continuing employment relationship was no longer possible. Because claimant's conduct was not isolated and created an irreparable breach of trust in the employment relationship, claimant's conduct was not an isolated instance of poor judgment but was instead misconduct.

For the above reasons, claimant was discharged for misconduct and therefore is disqualified from receiving unemployment insurance benefits effective March 1, 2026.

DECISION: Order No. 26-UI-334003 is affirmed.

S. Serres and A. Steger-Bentz;
D. Hettle, 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 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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