

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0648

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 16, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective April 12, 2026 (decision # L0018182757). Claimant filed a timely request for hearing. On July 8, 2026, ALJ Krueger conducted a hearing, and on July 9, 2026 issued Order No. 26-UI-334634, affirming decision # L0018182757 by concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective April 12, 2026.¹ On July 11, 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) Microtech employed claimant as a service and support technician from January 7, 2025 through April 16, 2026.

(2) The employer had written policies that required employees to report for work as scheduled and stated that absences of three consecutive workdays without notice would be considered a voluntary resignation. Claimant acknowledged receipt of these policies at hire.

(3) Service and support technicians were typically scheduled to work from 8:00 a.m. to 5:00 p.m., Monday through Friday, either at home, in the employer's offices, or in the field. One technician per week was scheduled to instead work on-call shifts from 5:00 p.m. to 8:00 a.m. on a rotating basis, after they had completed a one-to-two-week training period for on-call work in which they shadowed a more senior employee during their on-call shifts. During on-call shifts, all incoming service calls were routed to the designated employee at home. The employer expected employees working standard in-office shifts to clock in and out at the start and end of their shifts, as they were paid by the hour for those shifts.

¹ Although Order No. 26-UI-334634 stated that it modified decision # L0018182757, it affirmed that decision by concluding that claimant was disqualified from receiving benefits effective April 12, 2026.

When a technician worked an on-call shift or was in training for on-call shifts, they did not clock in or out at the start or end of their shifts, as they were paid a daily wage; but were required to log the start and end of each call they received, in part because they were paid an additional hourly wage while working on those calls. Employee schedules were posted electronically in real time, and claimant understood that they were subject to last-minute changes.

(4) On January 19, 2026, claimant began a period of protected leave that was scheduled to end on April 12, 2026. The employer had been satisfied with claimant's performance and looked forward to him returning to work following the leave period. As of January 19, 2026, claimant had not completed training for on-call shifts, but at some point had worked on call for a single night, and was scheduled for a week of on-call training from April 13-17, 2026.²

(5) On January 21, 2026, after claimant's leave period had been approved, the employer changed claimant's schedule for the week of April 13-17, 2026 to standard in-office shifts to allow him time to readjust to work after returning from leave before starting on-call training.

(6) On April 2, 2026, the employer sent claimant a text asking if he still planned to return to work on April 13, 2026, and he promptly responded that he did. Shortly thereafter, the employer discovered that unauthorized charges had been made to claimant's employer-issued credit card while claimant was on leave. The employer sent at least eight messages to claimant inquiring whether he had made or had knowledge of the charges so that they could secure the account and dispute the charges if they were fraudulent. Claimant ignored the messages and did not communicate with the employer through at least April 12, 2026. This caused the employer to suspect that claimant would not return to work.

(7) On April 13, 2026, claimant failed to report for his 8:00 a.m. shift or contact the employer regarding his absence. The employer did not attempt to communicate with claimant that day, opting instead to see whether claimant would be absent without notice for three consecutive days, which they would consider a resignation under their attendance policy. Claimant did not report to work for his April 14, 15, or 16, 2026 shifts, or advise the employer that he would be absent.

(8) In the afternoon of April 16, 2026, the employer contacted claimant by phone regarding his absences. The employer asked claimant whether he would be coming into the office that day and he replied that he would not. The employer then asked if he would be coming into the office the following day, and he replied that he would not. The employer then instructed claimant to return his work equipment, and claimant abruptly ended the call mid-conversation. The employer attempted to call claimant back but found that claimant had blocked the number. The employer considered claimant to have resigned through having three consecutive unexcused absences, while claimant believed he had been discharged by the employer instructing him to return his work equipment. Claimant returned his work equipment to the employer on April 21, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged for misconduct.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If claimant could have continued to work for the employer for an

² The record suggests that this was likely intended to be a training shift.

additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

The parties disputed the nature of the work separation. The employer had a written policy under which they considered three consecutive unexcused absences to constitute an employee's resignation. However, that the employer contacted claimant on April 16, 2026 to inquire whether he would come to the office to work that day or the following day demonstrated that, as of the start of the phone call, the employer was willing to allow claimant to continue working for an additional period of time despite his previous absences. Claimant responded that he would not be reporting for work at the office that day or the next day, without further explanation to the employer. The record suggests that whether claimant intended to report for work after April 17, 2026 was not discussed during the phone call, and therefore claimant did not unequivocally communicate to the employer an unwillingness to resume working after that date, or a desire to end the employment relationship. After claimant's replies that he would not report to the office on April 16 or 17, 2026, the employer instructed claimant to return his work equipment, at which point claimant abruptly ended the call and stopped communicating with the employer. The employer's directive to return the equipment demonstrated that at and after that moment they were unwilling to allow claimant to continue in the employment relationship for any additional time period, thereby ending the relationship. Accordingly, the work separation was a discharge that occurred on April 16, 2026.

Discharge. 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). "[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 he failed to report for work as scheduled from April 13-16, 2026, and during an April 16, 2026 phone call, told the employer he would not report to the office to work that day or the following day, without explanation. The employer reasonably expected their employees to report for work as scheduled, and claimant understood that expectation. Claimant did not

dispute that he did not report for work during the April 13-16, 2026 8:00 a.m. to 5:00 p.m. shifts, or that he told the employer in response to their inquiries on April 16, 2026 that he would not report to the office to work that day or the next. However, claimant asserted that this did not violate the employer's policies because he had reason to believe he was scheduled to work on-call shifts that week; that he had worked the on-call shifts from April 13-16, 2026; and, prior to the employer directing him to return his work equipment, that he had intended to work the remaining on-call shifts that week. The employer rebutted these assertions by a preponderance of the evidence.

An employer witness testified that employees were scheduled for on-call shifts only after completing a one-to-two-week training period with an experienced technician, and that claimant had never completed such training. Transcript at 18. The witness explained that as of January 19, 2026, claimant had been scheduled to undergo the training during the week of April 13-17, 2026, but that on January 21, 2026, he rescheduled claimant to standard office shifts for that week because it would be claimant's first week back from leave. Transcript at 31-32. Claimant did not directly rebut this testimony, but pointed out that the copy of the schedule for the week of April 13-17, 2026 submitted as evidence by the employer did not contain an entry for claimant at all. Transcript at 28-29. An employer witness explained that once claimant separated from employment the scheduling software deleted claimant's entries from past schedules, and noted that the entry for the employee who was actually on call that week is still visible on the schedule. *See, e.g.*, Transcript at 29; *See also* Exhibit 3 at 3. The employer also provided records showing that all after-hours calls were routed to the scheduled on-call employee that week and logged by that employee into the timekeeping system, while claimant logged no calls or time clock punches during the week. Exhibit 3 at 1-2. Claimant testified that he "returned the missed Teams messages that [he] had received. . . during [his] absence," but did not assert that he performed any other work tasks during the week. Transcript at 7. An employer witness testified that there would have been "digital touchpoints throughout the system" which would have verified that claimant had been performing work if that were the case, but that there was no digital record of claimant performing work during the week. Transcript at 62.

On this record, it is more likely than not that on and after January 21, 2026, claimant's work schedule for the week of April 13-17, 2026 was displayed as being standard 8:00 a.m. to 5:00 p.m. shifts. Claimant asserted at hearing that he was absent from those shifts due to a "malalignment" between the shifts the employer expected him to work and what had been displayed on the schedule prior to January 21, 2026, and faulted the employer for not inquiring about his absences earlier than the afternoon of April 16, 2026. Transcript at 64-65. Claimant's assertion that he was working on-call shifts during the week is largely unsupported by other evidence in the record, including that claimant had not been trained for such work, did not actually receive any calls or ensure that the calls were routed to him rather than the actual on-call technician, and did not communicate with the actual on-call technician to shadow them on any calls, as evinced by the call routing logs and claimant's lack of time entries.³

Even if claimant's assertion that he believed he was scheduled to work on-call shifts were true, it would mean that he failed to check his schedule for the week of April 13-17, 2026 during the preceding

³ Claimant testified that he first attempted to make time entries in the employer's system immediately after the employer directed him to return his work equipment during the April 16, 2026 phone call, but found that the employer had already disabled his access to the system. Transcript at 8. However, as claimant had not worked any standard shifts or received any after-hours support calls during the week, it is unclear what entries claimant was attempting to make, or why he did not attempt to make them at the times he was purportedly working.

approximately three months, despite knowing that work schedules were subject to last-minute changes. *See, e.g.*, Transcript at 10-11 (claimant testifying that when he had worked the single on-call shift in or before January 2026, he had initially been scheduled for on-call training the whole week, but the schedule had changed to standard shifts “without notice” during the first day of the week.) Failing to check the schedule during a nearly three-month leave of absence would have been a conscious decision made with disregard for the employer’s interests and the consequences of claimant’s actions, and claimant knew or should have known that it would probably result in a violation of the employer’s expectations. As such, to the extent claimant’s absences were caused by his failure to check the updated schedule upon returning from leave, his failure to act was at least wantonly negligent.

Furthermore, claimant was given the opportunity to preserve his employment during the April 16, 2026 phone call in which the employer asked whether he would report to the office for the remainder of his shift that day, or the next day, and he replied that he would not, without explanation.⁴ Even if claimant had, to that point, been under the impression that the employer did not expect him to work standard 8:00 a.m. to 5:00 p.m. shifts in the office that week, it should have been apparent from the employer’s questions what shifts the employer expected him to work for the remainder of the week. Claimant’s failure to agree to report to the office or offer a satisfactory explanation as to why he could not also was at least wantonly negligent.

While isolated instances of poor judgment are not misconduct, claimant’s actions were not isolated, in that, with at least wanton negligence, he either failed to check or intentionally disregarded his posted work schedule each day from April 13-16, 2026, and told the employer on April 16, 2026 in response to their inquiries that he would not report to the office for the remainder of the week. Moreover, claimant’s actions exceeded mere poor judgment by making a continued employment relationship impossible when he told the employer that he would not report to the office to work for the remainder of the week without offering an explanation or committing to report to work as scheduled at any future time. Accordingly, claimant’s actions during the week of April 13-17, 2026 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 April 12, 2026.

DECISION: Order No. 26-UI-334634 is affirmed.

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

DATE of Service: August 19, 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

⁴ Claimant implied at hearing that he gave those answers because he believed he was to work on-call shifts from home beginning at 5:00 p.m. those days and was only answering “the question that was prompted”; that is, whether he would be coming to the office. Transcript at 7-8. However, under the circumstances, it should have been apparent to claimant that the employer was asking those questions because they had been expecting him to work standard shifts during the week, and the record suggests that claimant was attempting to avoid further discussion of his attendance and work schedule.

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 محكمة 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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