

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0657

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 10, 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 January 18, 2026 (decision # L0017900734). Claimant filed a timely request for hearing. On June 29, 2026, ALJ Laurie-Gardiner conducted a hearing, and on June 30, 2026 issued Order No. 26-UI-333852, reversing decision # L0017900734 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On July 15, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer 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). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Flavor Vapor, LLC employed claimant as a production associate from October 2, 2025 to January 23, 2026.

(2) The employer expected their employees to report for work as scheduled and to provide at least two hours' notice if they would be late or absent. Claimant understood these expectations.

(3) On December 23, 2025, the employer issued claimant a warning for violations of their attendance policies.

(4) On January 23, 2026, claimant was scheduled to begin work at 8:00 a.m. but was experiencing a mental health crisis at the time and sought treatment at a hospital. At 9:06 a.m., claimant texted the

employer about the situation, stating that he did not know when he would be able to return to work. Claimant remained hospitalized until February 6, 2026.

(5) Prior to receiving claimant's 9:06 a.m. text message, the employer had decided, in light of the previous attendance warning, to discharge claimant for having not begun his shift at 8:00 a.m. or notified the employer that he would be absent. The employer did not immediately notify claimant of this decision or send his final paycheck.

(6) On February 9, 2026, claimant sent the employer a copy of a doctor's note documenting his hospitalization. Claimant learned either that day, or shortly thereafter, that the employer had discharged him on January 23, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged, 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). Isolated instances of poor judgment or absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant for having been absent without notice for the start of his 8:00 a.m. shift on January 23, 2026. The employer expected their employees to report for work as scheduled and provide at least two hours' notice if they would be late or absent, and claimant understood these expectations. The record suggests that the employer likely would not have discharged claimant for this absence if he had a better attendance history at that point in his employment. However, the initial focus of the misconduct analysis is on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g., Appeals Board Decision 09-AB-1767*, June 29, 2009. The last occurrence of an attendance policy violation is considered the reason for the discharge. *See generally* June 27, 2005 Letter to the Employment Appeals Board from Tom Byerley, Assistant Director, Unemployment Insurance Division. Therefore, the initial focus of the misconduct analysis is on claimant's January 23, 2026 absence and failure to notify the employer. Only if that incident is found to be a willful or wantonly negligent violation of a reasonable employer policy does the analysis shift to determining whether the incident was a single or infrequent occurrence, rather than a repeated act or pattern of other willful or wantonly negligent behavior. *See* OAR 471-030-0038(1)(d)(A).

Claimant was absent from work on January 23, 2026 due to severe mental health symptoms necessitating his hospitalization. As such, the absence was due to illness, and under OAR 471-030-

0038(3)(b), was not misconduct. Claimant failed to notify the employer that he would be absent at least two hours prior to the scheduled start of his shift, in violation of the employer's expectation. However, given the severity of claimant's symptoms at the time, it can reasonably be inferred that this was not the result of a conscious decision made with indifference to the consequences of his actions. Therefore, claimant also did not willfully or with wanton negligence violate the employer's policy regarding providing notice of his absence on that occasion. Accordingly, the analysis does not reach the issue of whether claimant had willfully or with wanton negligence violated the employer's attendance policies on prior occasions. Because claimant did not willfully or with wanton negligence violate the employer's attendance policies on January 23, 2026, his discharge was not for misconduct.

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 26-UI-333852 is affirmed.

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

DATE of Service: August 24, 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 محكمة 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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