

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0660

Reversed
Disqualification

PROCEDURAL HISTORY: On February 10, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0015925284). The employer filed a timely request for hearing. On April 24, 2026, and continuing on April 28, 2026, ALJ Nyberg conducted a hearing, and on July 10, 2026 issued Order No. 26-UI-334698, affirming decision # L0015925284. On July 20, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written argument because they 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). On August 11, 2026, after the August 10, 2026 deadline for submitting written arguments had passed, claimant submitted by email a certificate of service for a written argument but did not submit the written argument itself to EAB. EAB therefore did not consider written arguments from either party in reaching this decision.

FINDINGS OF FACT: (1) Nexus Family Healing employed claimant as a mental health therapist until December 31, 2025.

(2) The employer provided their employees with paid time off (PTO) and had written policies governing its accrual and use. For preplanned uses of leave, management approval was to be obtained at least seven days in advance, subject to management potentially denying a request based on operational needs. For usage of unplanned PTO, defined as paid time away from work which the employee does not request at least seven days in advance of the need for leave that can be used for any reason they see fit, employees were to provide notice of their absence at least two hours in advance of their scheduled shift, or as soon as practicable under the circumstances. Exhibit 1 at 52.¹ The employer also had a point-based

¹ The first two pages of the file containing Exhibit 1 were not marked as evidence, and the page numbers of the file therefore differ from the page numbers of the exhibit cited in this decision.

attendance policy in which instances of tardiness or unplanned PTO use accrued points that could subject an employee to progressive discipline. Claimant acknowledged receipt of these policies at hire. The employer also expected their employees to comply with management directives, and claimant understood this expectation.

(3) On November 3, 2025, claimant emailed her supervisor asking whether she should write a letter to a court concerning a client. Claimant's supervisor replied, "I think it makes most sense for you to write it as his therapist, [claimant], and I can endorse it. I will check with [the employer's executive director] on how she wants us to submit that kind of recommendation also, I'll let you know what she says!" Exhibit 1 at 6. On November 5, 2025, claimant's supervisor discussed the possibility of submitting a letter with the executive director, who decided that a letter should not be submitted to the court. Immediately following this conversation, the supervisor discussed the matter with claimant and learned that claimant had already submitted the letter to the court without her review or endorsement. Claimant was thereafter suspended from work pending investigation of the matter, initially without a definite return date.

(4) While claimant was suspended from work, she purchased non-refundable airline tickets for a trip to Texas that would occur from approximately December 22 through 29, 2025. Claimant did not submit a PTO request for those dates prior to purchasing the tickets. After learning the end date of her suspension, claimant requested to use her entire accrued PTO balance consecutively to the end of the suspension, and the employer approved this. Claimant returned from the combined suspension and leave period on November 24, 2025.

(5) On November 24, 2025, claimant told her supervisor about the planned trip and that she wanted to discuss how leave could be arranged, and eventually a meeting was set for December 9, 2025 for claimant, her supervisor, and the executive director to discuss the matter. The supervisor sent claimant an email in advance of the meeting stating that she could not use flex time (working additional hours in other pay periods) to account for the time off during the proposed trip, and that the time off request would have to comply with standard PTO and attendance policies.

(6) On December 9, 2025, the meeting regarding claimant's leave request was held, and it concluded with claimant being advised to submit a detailed proposal regarding coverage for the requested time off. Approximately ten minutes after the meeting concluded, claimant's supervisor emailed claimant, writing, "In considering the flex time and PTO policies and practices as well as operational need, I've determined that the original determination will stand, that time is not approved. You do not need to submit a coverage proposal as discussed in our meeting today." Exhibit 1 at 39.

(7) Claimant and her supervisor exchanged several emails thereafter in which claimant requested an explanation for the denial of time off and a pathway to obtaining the time off. Claimant's supervisor explained that claimant had exhausted her PTO balance in November and that the flex time policy was designed for minor schedule variations within a single pay period rather than accommodating several days of leave, and reiterated in each email that the request for time off and schedule modification remained denied. In a December 10, 2025 email, the supervisor wrote, "I also want to share my concern that in the past, when PTO requests were denied based on operational needs, time away was still taken—for example, your trip to Africa. If that is your intention in this situation as well, please note that the [attendance and PTO policies] will be in effect[.]" Exhibit 1 at 42.

(8) On December 12, 2025, the employer issued claimant a “Last Chance Agreement” based on alleged policy violations occurring between November 24 and December 1, 2025, unrelated to claimant’s leave request for late December 2025. Exhibit 1 at 20. In part, the document cited past “insubordinate behavior” as reason for its issuance, and in a section entitled “Professional Conduct & Zero Tolerance for Insubordination” stated that “failure to follow directives will be considered a violation of this agreement.” Exhibit 1 at 19-20. The document also stated that “failure to adhere to these terms will result in termination without further warning.” Exhibit 1 at 21. Claimant was provided with a copy of the agreement but refused to sign it.

(9) On December 22, 2025, claimant did not appear for work at the employer’s office or notify the employer that she would be absent. Although the employer had allowed claimant to work remotely at times, she had not been approved to work remotely on December 22, 2025.² Claimant’s supervisor contacted her about the absence, and claimant replied that she was in Texas, would be working remotely that day, and would be taking unpaid time off from December 23 through 26, 2025. The supervisor responded that claimant’s absence from the office was unauthorized and that she was expected to report for work, in person, that day and for the rest of the week. Claimant then sent an email to her supervisor stating, in part, “To my knowledge there has not been a policy requiring prior approval to switch my remote day,” and “[I]t was understood by all parties that I would be using unplanned PTO during this period.” Exhibit 1 at 43. Claimant’s email also stated, “As previously communicated, I will be remote this Monday and next Monday [December 22 and 29, 2025], and out of the office for the remainder of the week.” Exhibit 1 at 43. The supervisor called claimant and reiterated the expectation that claimant work in the office from December 22 through 29, 2025, to which claimant replied, “[O]kay.” Exhibit 1 at 44. Claimant then sent the supervisor an email memorializing that conversation.

(10) From December 23 through 26, 2025, claimant provided notice to the employer two hours in advance of each shift that she would be absent from work that day. Claimant remained in Texas during that period and did not answer several calls from the employer’s human resources (HR) manager. Claimant’s absence from the office during this period impacted the treatment of at least one of the employer’s clients.

(11) On December 29, 2025, claimant did not report for work at the employer’s office, but that morning spoke by phone with the HR manager. The HR manager inquired about claimant’s absence from the office during the previous week. Claimant told the HR manager that she had initially been told she could “collaborate” with management regarding the time off request, but acknowledged that the decision had been reversed shortly thereafter, stating, “[B]ut that did not change the status of my flight or my plans,” and that, “[P]er the employee handbook, I am permitted to use the call-off process as long as it is done in a timely manner[.]” Exhibit 1 at 45. Claimant sent an email to the HR manager memorializing the conversation after it ended. The HR manager replied to the email, adding that claimant stated during the call that she would also not be working that day (December 29, 2025), and claimant replied to that email that she had stated she would be working remotely that day. Claimant’s supervisor was added to the email chain, and emailed claimant in reply that she had previously directed claimant by phone to report for in-person work that day.

² The record suggests that the employer had allowed claimant to work remotely on the same day each week, subject to operational needs, and that claimant had been allowed to select the day, which was not Monday.

(12) On December 31, 2025, the employer discharged claimant for having failed to report for in-person work from December 22 through 29, 2025, which they considered insubordination.

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). Good faith errors are not misconduct. OAR 471-030-0038(3)(b).

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 failed to report for in-person work while she was on a pre-planned trip to Texas from December 22 through 29, 2025, including not reporting for work at all from December 23 through 26, 2025. The employer considered this a violation of their policy prohibiting insubordination, which was highlighted in the December 12, 2025 “Last Chance Agreement.” Claimant did not dispute her attendance history during this period, and the record shows that she understood that the employer had, on multiple occasions, denied her requests for planned leave or to otherwise modify her schedule for the period.³ Despite being denied permission to alter her work schedule to go on the trip, claimant did not consider her failure to report for in-person work to be insubordinate, largely by relying on the application of the employer’s unplanned PTO policy.

The order under review concluded that claimant’s actions during the trip were “allowed by the employer’s rules” and that she had “operated within the employer’s attendance rules when she called out

³ See, e.g., Exhibit 1 at 39 (Claimant’s supervisor writing to claimant in a December 9, 2025 email: “In considering the flex time and PTO policies and practices as well as operational need, I’ve determined that the original determination will stand, that time is not approved.”); Exhibit 1 at 42 (Claimant’s supervisor writing to claimant in a December 10, 2025 email: “[Y]our previous request to take time off exhausted all available PTO. . . Extended time off without available PTO is not something we can approve. . . It is expected that employees. . . work their typical schedules with few exceptions, and those exceptions remain at the discretion of each employee’s supervisor. If we mistakenly conveyed that there might be wiggle room for you to use flex time instead of PTO for a pre-planned vacation, my apologies—that was not [the executive director’s] or my intention. After [we] sought clarification it was brought to our attention that we cannot approve flex time in that manner. . . I will be sure to update [you] soon regarding how work-from-home and flex time can and cannot be used[.]”)

from work for three days in December [2025].” Order No. 26-UI-334698 at 3. The record does not support this conclusion. Although the employer had a policy allowing for the use of unplanned PTO, the policy was only applicable when the employee did not request the time off at least seven days in advance of the need for leave. Here, claimant *had* requested the time off more than seven days in advance of the need for leave, and therefore only the planned PTO policy was applicable to her situation. Claimant’s request for planned PTO was denied based on operational needs and claimant’s lack of a PTO balance. Claimant therefore knew or should have known that she could not rely on using the unplanned PTO policy as an alternative to circumvent the denial of planned leave, and that doing so would probably result in a violation of the employer’s expectation. Claimant’s decision to proceed with the trip after the planned PTO request was denied was made with indifference to the consequences of her actions and disregard for the employer’s interests, and she therefore acted with at least wanton negligence.

Furthermore, in a December 10, 2025 email, claimant’s supervisor specifically warned claimant that if her intention was to try to circumvent the planned PTO policy by calling out each day under the unplanned PTO procedure (as the email suggested she had done in the past to take a different trip when planned PTO was denied), that she would face consequences for doing so. That claimant apparently expected the consequence to be the accrual of attendance points rather than a discharge for insubordination does not alter the fact that she knew that missing work during the period so that she could proceed with the trip would violate the employer’s expectation that she be at work. As such, claimant’s reliance on the unplanned PTO callout procedure to justify her actions cannot be considered a good faith error⁴ that would prevent the actions from constituting misconduct. *See Hood v. Employment Dept.*, 245 Or. App. 606, 263 P.3d 1126 (2011) (The “error” in OAR 471-030-0038(3)(b) refers to a mistake of fact or action deriving from a mistake in fact, not a claimant’s refusal to comply with an employer policy because they honestly believe the policy is misguided, illegal, stupid, or unreasonable.)

However, isolated instances of poor judgment are not misconduct. The employer asserted that claimant had violated their expectations on several other occasions in November and December 2025, including incidents for which claimant was suspended from work in November 2025, and issued the “Last Chance Agreement” on December 12, 2025. Nevertheless, it is unnecessary to determine whether those incidents constituted a pattern of other willful or wantonly negligent conduct because claimant’s actions with respect to the proximate cause of her discharge—leaving the state for more than a week after the employer repeatedly denied her requests for time off or other schedule modifications to accommodate the trip—exceeded mere poor judgment.

“[T]he determination whether an instance of poor judgment has occurred logically involves an examination of the claimant’s decision-making process that led to the conduct or consequences, as well as the nature or gravity of the conduct or consequence itself.” *Freeman v. Employment Dept.*, 195 Or App 417, 98 P3d 402 (2004). Here, the employer repeatedly and explicitly denied claimant’s requests to modify her work schedule to accommodate the trip, and even anticipated and warned against claimant trying to misapply the unplanned PTO callout procedure to justify taking the trip in defiance of the

⁴ A “good faith error” logically involves some sort of mistake made with the honest belief that one is acting rightly. *See Webster’s Third New Int’l Dictionary* 978 (Unabridged ed. 2002) (defining “good faith” as “a state of mind indicating honesty and lawfulness of purpose : belief in one’s legal title or right: belief that one’s conduct is not unconscionable or that known circumstances do not require further investigation : absence of fraud, deceit, collusion, or gross negligence”).

denials, which claimant ultimately did anyway. Claimant's decision-making process therefore involved deliberate disobedience of the employer's directives despite opportunities to change course by foregoing the trip, and in the context of having received a final warning from the employer that they had "zero tolerance" for further insubordination.

As to the nature or gravity of the conduct and consequences to the employer, aside from demonstrating claimant's unwillingness to follow the employer's directives, claimant's unauthorized absence from the office encompassed multiple days during a holiday period and, per the employer, had a detrimental impact on their operations. See Exhibit 1 at 34 ("[Claimant's] absence negatively impacted client care and resulted in the cancellation of a client's Treatment Plan Review meeting that she scheduled for December 26, despite knowing she was not planning to work that day.") Under these circumstances, a reasonable employer would conclude, based on this incident alone, that claimant would likely continue to disobey important directives in the future, and that a continued employment relationship was therefore impossible. Accordingly, claimant's conduct exceeded mere poor judgment and cannot be excused as an isolated instance of poor judgment. Therefore, claimant's discharge was for misconduct.

For these reasons, claimant was discharged for misconduct and is therefore disqualified from receiving unemployment insurance benefits effective December 28, 2025.

DECISION: Order No. 26-UI-334698 is set aside, as outlined above.

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

DATE of Service: September 1, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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