

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0662

Affirmed
No Disqualification

Confirmada
No Descalificación

Este documento incluye información importante que no ha sido traducida al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-378-2077 para obtener servicios de traducción gratuitos.¹

PROCEDURAL HISTORY: On May 28, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving unemployment insurance benefits effective March 22, 2026 (decision # L0017822483).² Claimant filed a timely request for hearing. On June 24, 2026, ALJ Wahl conducted a hearing interpreted in Spanish, and on June 30, 2026 issued Order No. 26-UI-333928, reversing decision # L0017822483 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the discharge. On July 20, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

¹ This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-378-2077 to obtain free translation services.

² Decision # L0017822483 stated that claimant was denied benefits from March 22, 2026 through March 20, 2027. However, decision # L0017822483 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 22, 2026, and until he earned four times his weekly benefit amount. See ORS 657.176.

La decisión # L0017822483 dijo que al reclamante se le negaron los beneficios desde el 22 de marzo do 2026 hasta el 20 de marzo de 2027. Sin embargo, la decisión # L0017822483 debería haber dicho que el reclamante estaba descalificado para recibir beneficios a partir del domingo 22 de marzo do 2026 y hasta que él ganara cuatro veces su cantidad de beneficios semanales. ORS 657.176.

FINDINGS OF FACT: (1) Winco Holdings, Inc. employed claimant from July 28, 2005 through March 23, 2026. Claimant was initially a warehouse worker, but on June 4, 2025 began working as a commercial vehicle driver. Claimant did not have prior experience working as a commercial driver.

(2) The employer had a written policy requiring employees to immediately report to their supervisor or safety committee chairperson if they were involved in or observed an accident or any damage to company property. Exhibit 1 at 10. Claimant acknowledged receipt of a copy of the policy at hire. In practice, the employer expected their commercial drivers in such situations to first use a mobile device to generate a damage report, then report the incident to their dispatch supervisor to generate an incident report. Claimant did not fully understand this expectation.

(3) On December 3, 2025, claimant neglected to disconnect air hose lines on his vehicle, which caused damage to the trailer. Claimant did not complete a damage report using his mobile device because he was unaware the employer expected him to do so, but he immediately reported the incident to his supervisor. The supervisor directed claimant to complete a damage report on the mobile device. Claimant misunderstood this directive to mean that in future incidents, he was to complete a damage report on the mobile device *instead of* reporting the matter to his supervisor.

(4) Claimant was suspended from work without pay from December 31, 2025 through January 7, 2026 as discipline for the December 3, 2025 damage to the trailer, and failure to completely follow the employer's incident reporting procedure. Claimant thereafter underwent additional safety training that did not explicitly address the employer's damage reporting expectations in their entirety.

(5) On March 13, 2026, claimant was driving a truck out of the employer's parking lot and accidentally struck a piece of equipment, damaging both the equipment and the truck. Claimant immediately completed a damage report using his mobile device, but did not report the matter to his supervisor because he believed the employer did not expect him to do so based on his conversation with the supervisor following the December 3, 2025 incident. Despite claimant's damage report, dispatch was unaware of the incident until March 17, 2026.

(6) On or before March 23, 2026, the employer met with claimant regarding the March 13, 2026 incident. Claimant told the employer how the property was damaged and that he believed he had fully complied with the employer's reporting policies by immediately generating a damage report through the mobile device. On March 23, 2026, the employer discharged claimant for having failed to immediately notify his supervisor of the property damage.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct. *El empleador despidió al reclamante, pero no por mala conducta.*

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).

The employer discharged claimant because he did not immediately report to his supervisor that he had caused property damage on March 13, 2026.³ The employer had a written policy that required employees to immediately report any property damage or accident to their supervisor, and claimant initially understood this policy. In practice, the employer expected their drivers in such situations to both notify their supervisor and use a mobile device to complete a damage report. Claimant did not understand the latter part of the expectation prior to a December 3, 2025 incident in which he accidentally caused property damage and only notified his supervisor of it without completing a damage report. Following the December 3, 2025 incident, claimant believed the employer expected him to only complete the damage report using his mobile device, and that separately notifying his supervisor was not expected.

Claimant did not dispute that on March 13, 2026 he accidentally damaged the employer’s property and only completed a damage report without also notifying his supervisor. The record shows that claimant consciously decided not to report the incident to his supervisor because he believed, based on his experience following the December 3, 2025 incident, that this step was unnecessary if a damage report was filed. Therefore, whether claimant acted with wanton negligence in violating the employer’s expectation that he notify his supervisor turns on whether he was acting with disregard for the employer’s interests or with indifference to the consequences of his actions, when he knew or should have known that his actions would probably result in a violation of the employer’s expectations. There is some ambiguity in the record as to whether there was another incident, on January 1, 2026, in which claimant was alleged to have caused property damage and failed to follow the employer’s reporting procedures. If such an incident occurred and claimant was disciplined for it, this would be relevant to assessing claimant’s knowledge of the employer’s reporting expectations at the time of the March 13, 2026 incident.

A December 31, 2025 notation in claimant’s personnel record stated that in response to claimant having damaged the employer’s trailer by failing to disconnect air hoses on December 3, 2025, he was suspended without pay “from 12/31/25 to 12/31/25.” Exhibit 1 at 4. Another notation in the personnel record, dated January 7, 2026, stated that claimant was suspended from work without pay from “01/01/2026 to 01/07/2026” for “causing damage to a trailer and failing to follow the equipment damage reporting process,” but the notation did not provide any details as to when the incident for which he was suspended occurred or precisely what had happened in the incident. Exhibit 1 at 2. At hearing, the ALJ apparently assumed this notation meant that the employer believed claimant had returned to work on January 1, 2026, and again damaged the employer’s trailer and failed to complete one or both parts of the employer’s reporting procedures that day, resulting in a new suspension from work. *See, e.g.*, Transcript at 7.

³ The initial focus of the discharge analysis is on the proximate cause of the discharge, which is generally the last incident of misconduct before the discharge. *See, e.g., Appeals Board Decision 12-AB-0434*, March 16, 2012.

The ALJ asked the employer's witness about "an incident on January 1st," and the witness replied with the information from the January 7, 2026 notation but did not provide any additional detail about the incident leading to that suspension. Transcript at 7-8. The witness was then asked if claimant was warned of the consequences of violating the reporting policy in the future in connection with the six-day suspension, and the witness testified, "Yes. Claimant was. . . brought in for a meeting and was warned that. . . he would be looking at a termination if something else occurred within the nine months. . . [W]hat we did. . . during this time was issue him safety videos to watch. And we gave him two extra days of additional training to help him. . . try to correct any behavior." Transcript at 8.

The ALJ later asked claimant if he had been suspended on January 1, 2026 "for not following the safety plan" and claimant replied that that was correct. Transcript at 14. The ALJ then asked claimant why he had received that suspension and he replied, "Because I had caused [damage] to the air hose." Transcript at 14. The ALJ then asked whether claimant followed the reporting process after that incident, and claimant replied, "Yes. That is when I told my supervisor. That was the accident – the incident when my supervisor said to – for me to go ahead and enter it into the [mobile device damage report system]. That was the first time." Transcript at 14–15. Claimant was asked about the training videos he was required to watch following his suspension, and he testified that they largely concerned driving safety and included a portion on use of the mobile device for submitting damage reports, but that he could not remember whether any mention was made of having to report property damage to a supervisor. Transcript at 15.

On this record, it is more likely that the employer decided to extend claimant's suspension from December 31, 2025 to January 7, 2026 based solely on the December 3, 2025 incident than it is that claimant returned to work on January 1, 2026, committed similar or identical policy violations on that date as had occurred on December 3, 2025, and was immediately suspended for an additional six days. Moreover, even if the latter scenario actually occurred, the employer failed to show by a preponderance of the evidence that the incident altered what claimant knew or should have known regarding the employer's damage reporting procedures from what he had understood the procedures to be shortly after December 3, 2025. Therefore, the record shows that on March 13, 2026, claimant's understanding of the damage reporting policy had been based on his supervisor's reaction to the December 3, 2025 incident, in which claimant reported the damage to his supervisor and was instructed to use his mobile device to complete a damage report. Claimant testified that after that, he "assume[d] it wasn't important. . . to notify the supervisor" and that he therefore only completed the damage report using the mobile device on March 13, 2026. Transcript at 14.

Under these circumstances, claimant did not act with disregard for the employer's interests or with indifference to the consequences of his actions, as his timely completion of the damage report demonstrated that he was not attempting to evade responsibility for causing the damage or to conceal it from the employer. Claimant's misunderstanding of his supervisor's response to the December 3, 2025 incident, after which claimant erroneously believed that only the mobile device damage report was necessary, meant that he did not know or have reason to know that failing to also report the incident to his supervisor would violate the employer's expectation. At worst, claimant's mistake in this regard was a good faith error,⁴ which is not misconduct. *See Goin v. Employment Dept.*, 203 Or App 758, 126 P3d

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").

734 (2006) (Claimant's incorrect assumption caused her to violate the employer's policy, but she acted in good faith). Accordingly, claimant's March 13, 2026 violation of the employer's expectation that he notify his supervisor of property damage was not shown to be willful or wantonly negligent, and in the alternative was, at worst, a good faith error. Claimant's discharge was therefore not for misconduct.

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

DECISION: Order No. 26-UI-333928 is affirmed. *La Orden de la Audiencia 26-UI-333928 queda confirmada.*

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

DATE of Service: August 28, 2026

FECHA de Servicio: 28 de agosto de 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

NOTA: Puede apelar esta decisión presentando una Petición de Revisión Judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) **dentro de los 30 días siguientes a la fecha de entrega de esta decisión indicada arriba.** Vea ORS 657.282. Para obtener formularios e información, visite <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> y elija el formulario para "Junta de Apelaciones Laborales". En este sitio web, hay información disponible en español. Puede solicitar un intérprete para la Corte en <https://web.courts.oregon.gov/osca/clas/CLASRequestFormRedirect.html> También puede comunicarse con la Corte de Apelaciones por teléfono al (503) 986-5555, por fax al (503) 986-5560 o por correo a 1163 State Street, Salem, Oregon 97301.

Por favor, ayúdenos a mejorar nuestro servicio completando una encuesta de servicio al cliente. Para completar la encuesta en línea, vaya a <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Si no puede completar la encuesta en línea y desea obtener una copia impresa de la encuesta, comuníquese con nuestra oficina.



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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