

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0665

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 13, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the discharge (decision # L0017558943). The employer filed a timely request for hearing. On July 17, 2026, ALJ Enyinnaya conducted a hearing and issued Order No. 26-UI-335314, affirming decision # L0017558943. On July 23, 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).

FINDINGS OF FACT: (1) Tambry Ventures South Oregon, LLC employed claimant as a hairstylist at their salon from October 27, 2025 through December 29, 2025.

(2) On November 24, 2025, claimant worked what would be her last shift for the employer. Claimant was scheduled to work on November 26, 29, and 30, 2025, but was absent from each of those shifts due to illness. Claimant gave timely notice to the salon manager, who excused the absences.

(3) On December 1, 2025, claimant requested a leave of absence through February 1, 2026 due to her health condition, as she planned to have surgery. The salon manager told claimant that the request was approved. Claimant had been scheduled to work on December 3 and 4, 2025, but did not work those shifts or provide separate notice that she would be absent those days because the leave request had been approved. Claimant was not scheduled to work after December 4, 2025.

(4) Later in December 2025, the employer determined that claimant's leave request should not have been approved because, due to her short tenure with the employer, she did not qualify for protected leave or discretionary unpaid leave under the employer's policies. As a result, the employer considered

claimant to have quit work because they presumed she remained medically unable to return to work at that time.

(5) On December 29, 2025, the employer sent claimant a notice of “voluntary termination,” stating that her employment was terminated effective November 29, 2025 because she did not “qualify for leave of absence time to recover from surgery.” Transcript at 9-10. The notice also stated that claimant was eligible for rehire. Prior to receiving this notice, claimant had intended to return to performing work for the employer on February 1, 2026 if medically able to do so at that time.

CONCLUSIONS AND REASONS: Claimant was discharged, but not 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 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 asserted that claimant quit work by having been temporarily unable to work for medical reasons and ineligible for protected or discretionary leave. However, claimant at no time indicated to the employer that she was ending the employment relationship and, to the contrary, demonstrated that she desired to preserve the relationship by applying for and initially being granted a period of leave by the salon manager through February 1, 2026. Claimant first learned that the employer would not allow the period of leave on December 29, 2025, when they also notified her that her employment had been terminated and that she was eligible for rehire. The record does not suggest that the employer asked claimant how she wished to proceed with the employment relationship in light of the previously granted leave being rescinded, as the December 29, 2025 correspondence served as notice both that the leave had been rescinded and that the employment relationship had ended.

The record therefore shows that claimant had been willing to continue the employment relationship beyond December 29, 2025 despite her temporary inability to perform work, while the employer’s termination notice objectively conveyed that they were unwilling to continue the relationship after that date. The employer’s willingness to potentially rehire claimant in the future did not alter the fact that the existing employment relationship ended on December 29, 2025. Accordingly, the work separation was a discharge that occurred on December 29, 2025.

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). Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because she was temporarily unable to work for medical reasons and ineligible for protected or discretionary leave due to her short tenure with the employer. It can reasonably be inferred that the employer expected their employees to be capable of regularly attending work and performing their job duties, and the record shows that claimant did not meet that expectation after November 24, 2025. However, the employer did not dispute that claimant's failure to meet that expectation was due to a severe illness requiring surgery. As such, claimant's absence was not the result of willful or wantonly negligent conduct. Moreover, OAR 471-030-0038(3)(b) provides that absences due to illness are not misconduct. Additionally, to the extent the employer may have misconstrued claimant's temporary inability to work and newly discovered ineligibility for leave as constituting a voluntary resignation and discharged her for that reason, this also did not involve claimant willfully or with wanton negligence violating an employer policy, and was not misconduct. Accordingly, the employer has not shown that claimant's discharge was 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-335314 is affirmed.

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

DATE of Service: September 3, 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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