

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0669**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 21, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0017694236). The employer filed a timely request for hearing. On July 15, 2026, ALJ Krueger conducted a hearing, and on July 16, 2026 issued Order No. 26-UI-335203, affirming decision # L0017694236. On July 21, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Geraldi's employed claimant at their restaurant from April 19, 2024 through March 10, 2026.

(2) Claimant primarily performed back-of-house tasks such as preparing ingredients and cooking, although he occasionally helped with front-of-house tasks such as greeting patrons and taking orders over the phone. Claimant worked full time when he began working for the employer.

(3) Beginning in September 2025, the owner of the business began expecting claimant to perform more front-of-house tasks. Claimant was not aware of this expectation.

(4) In November 2025, claimant spoke to the owner to express dissatisfaction with the job, primarily because the owner had cut claimant's hours significantly due to a seasonal downturn in business. At the time, claimant was only working two days per week for the employer and therefore was looking for another job to supplement his income. Claimant found other work while continuing to work part-time for the employer but eventually left that work and asked the owner if he could return to working full-time for the employer.

(5) On February 28, 2026, claimant worked what would be his final shift for the employer. Claimant did not perform any front-of-house tasks that day, although the employer had expected him to do so.

(6) On the evening of Monday, March 2, 2026, the owner texted claimant to tell him, in relevant part, “[W]e’re good tomorrow and Wednesday right now have still been super slow. Let’s just go back to Thursday Friday Saturday and talk more on Thursday about getting you more hours.” Exhibit 1 at 1. Claimant did not directly respond to that message. On the evening of Tuesday, March 3, 2026, the owner texted claimant to say, in relevant part, “Change of plans you wanna pull some hours tomorrow? we need help.” Exhibit 1 at 1. Claimant responded shortly thereafter, “Yeah I can work tomorrow.” Exhibit 1 at 1. Later that evening, the owner texted claimant to say, “Let’s just stick to Thursday. We got fucking annihilated tonight and we only have 11 bags of bread for tomorrow. It will be pointless. Let’s chat more on Thursday and get back to it.” Exhibit 1 at 1.

(7) On the afternoon of Wednesday, March 4, 2026, the owner texted claimant to say, in relevant part, “It’s really disheartening to see progress stall after our conversation last week man . . . Effective communication is key to not only running a successful restaurant/business[.] I genuinely want to help . . . and when I don’t see the effort to follow through on basic ass instructions, it’s discouraging.” Exhibit 1 at 1. Claimant responded to apologize for his lack of an earlier response. The owner then replied, in relevant part, “After spending my time to convey my genuine concerns dude, I still feel frustrated with your response. it seems like my points aren’t being understood, which makes me hesitant and annoyed to continue work on this together . . . Let me know if you’d like to make any changes. I’ll let you know when we need help. Not tomorrow.” Exhibit 1 at 1.

(8) On Thursday, March 5, 2026, claimant texted the owner to ask, “Am I working tomorrow?” Exhibit 1 at 1. The owner replied the following day with a thumbs-down emoji. During the ensuing text exchange on March 6, 2026, claimant expressed confusion over why the owner had stopped scheduling him for shifts, and the owner expressed frustration with claimant’s focus on having his hours cut when the owner felt that claimant was not “helping [the employer’s] business grow” by, among other things, taking on more front-of-house tasks. Exhibit 1 at 1.

(9) On Monday, March 9, 2026, claimant texted the owner to ask, “[Am] I working at all this week?” Exhibit 1 at 1. The owner responded by reiterating the frustration he had expressed during their exchange on March 6, 2026, but did not answer claimant’s question. On Tuesday, March 10, 2026, claimant texted the owner to ask if his paycheck was ready for pickup that day, to which the owner replied, “Yeah anytime after 12[.]” Exhibit 1 at 1.

(10) On May 8, 2026, the owner texted claimant to say, in relevant part, “Come back to work dude, let’s sit and talk.” Exhibit 1 at 1. Claimant responded the same day, saying that he was free to speak to the owner that day. The owner did not further respond until May 30, 2026, apologizing for the delayed response and telling claimant, in relevant part, that he was welcome to return to work for the employer, but would understand if claimant chose not to. Claimant did not return to work for the employer.

**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. At hearing, the owner testified that he believed that claimant had voluntarily quit, explaining, in relevant part:

Well, I think it would just be under the circumstances of [claimant] was just coming in and not doing exactly what I requested which was answering phones and taking phone in orders or being at the front counter. So [claimant] would show up and . . . none of those things would happen. And so I would ask him, hey, tomorrow, hey, can we do this?

And then when I started lessening his hours because . . . other people that were doing these things for much less money than [claimant] gets paid or was paid. I just simply was expressing those and so I didn't staff him until I heard, "Hey, you're right. I haven't picked up on those things. I . . . will be there. I'll . . . do that. I'll do what . . . was requested."

Transcript at 13. The owner appeared to mean by his testimony that he believed that claimant had voluntarily quit work because claimant had not been performing the type of tasks that the owner wanted him to complete. The owner did not otherwise explain why he believed this was a voluntary leaving. By contrast, claimant testified that he believed he had been discharged, explaining that he had asked the owner multiple times if he (claimant) was scheduled for work, but did not receive a meaningful response. Transcript at 15-16.

The record does not show that either party made any explicit statements to the other indicating a clear, unambiguous desire for an end to the employment relationship, such as claimant stating that he was quitting or the employer telling claimant that he was being discharged. Thus, it is necessary to consider the parties' actions to infer their intent. After claimant's last shift on February 28, 2026, claimant and the owner texted back and forth over the course of more than a week. During that time, the owner cancelled claimant's scheduled shifts or otherwise told him not to come to work at least three times; whereas claimant agreed to work a given shift or otherwise asked if he should come to work on the following day or in the near future, at least three times. The owner's reasons for telling claimant not to come to work included both not needing him due to slow business, and, as shown in his testimony above, frustration with claimant for not meeting various expectations.

Claimant's text messages unambiguously show a willingness to continue working for the employer. The ambiguity in the owner's statements make his intent difficult to discern, as he appeared to change his mind about claimant's employment status several times over the course of those text messages. Nevertheless, in light of the multiple instances in which the owner told claimant not to return to work, it can be reasonably inferred that he became unwilling to allow claimant to continue working for him, at least in part because of his frustration with how claimant was performing his duties. On March 10, 2026, claimant picked up what was ultimately his final paycheck from the employer, after checking with the owner to confirm that it was ready. While the owner did so confirm, he made no indications at that time that claimant was welcome to return to work. Thus, it can reasonably be further inferred that the owner was finally, on that date, unwilling to allow claimant to continue working for him. As such, the work separation was a discharge which occurred on March 10, 2026.

Finally, although the owner offered to allow claimant to “come back to work” on May 8, 2026, the employment relationship had already been severed at that point. As such, this communication to claimant was, at most, a new offer of work, rather than evidence that a continued employment relationship still existed at that time.

**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).

The employer discharged claimant on March 10, 2026, after more than a week of back-and-forth discussions with claimant about returning to work and the employer’s expectations of claimant were he to do so. Because the owner—the employer’s sole witness—did not admit that he *had* discharged claimant, he did not explicitly say why he had done so. Nevertheless, it is clear from the record that the owner’s unwillingness to have claimant return to work resulted from the fact that claimant had not been meeting the owner’s expectations regarding the completion of front-of-house tasks.

More specifically, the owner stopped scheduling claimant for shifts after claimant’s last shift on February 28, 2026, and told claimant not to come into work on several occasions between then and March 10, 2026. While some of these occasions were apparently due to a lack of work, the final substantive exchange regarding this issue, on March 9, 2026, included the following response from the owner, to claimant’s inquiry about whether he would be scheduled for that week:

I apologize for using the word trust that was not the correct wording. I think it’s more frustration I’m feeling and I need you to be eager to want to jump in more. Take orders phone calls help in the back salads, pastas etc, so I can cut people that are just standing around and prioritize the best of us.

Exhibit 1 at 1. In response, claimant noted that it was hard to do what the owner asked of him when he was not actually being scheduled for work. Exhibit 1 at 1. The owner did not respond to this or offer to reschedule claimant.

At hearing, the owner explained that while he did want claimant to continue working for him, he had “continued to cut [claimant]’s hours until [claimant] gave [the owner] some form of feedback that . . . gave [the owner] proof that [claimant] was eager to come back to something that was just like waiting for [claimant] and great.” Transcript at 12. Reading this and similar testimony together with the text messages in Exhibit 1, the owner’s concern here appears to be that claimant did not adequately *acknowledge* that the owner wanted him to perform more front-of-house tasks. Thus, while the overarching concern which led to the discharge was claimant’s failure to meet the employer’s

expectations regarding the completion of certain tasks, the proximate cause of the discharge—that which led the owner to stop scheduling claimant—was claimant’s lack of apparent eagerness to agree to complete such tasks.<sup>1</sup>

In response to the administrative law judge’s question at hearing, as to whether the owner told claimant that he would not schedule claimant until claimant agreed to meet the owner’s expectations regarding the completion of front-of-house tasks, the owner testified at hearing that he had “pretty clear[ly]” stated as much in the March 2026 text messages with claimant. Transcript at 13–14. However, while such an intent might be inferred from these messages, a review of the messages does not show that the owner conveyed this expectation clearly to claimant, the owner’s apparent efforts to do so notwithstanding. *See* Exhibit 1 at 1. Claimant’s responses to the owner’s messages likewise show that he was not aware of this expectation that he eagerly agree to perform the front-of-house tasks. Thus, even if the employer’s expectation regarding claimant’s communications here was reasonable, the employer did not meet their burden to show that claimant either knew or had reason to know of those expectations. As such, to the extent that the employer discharged claimant for this reason, it was not the result of claimant’s willful or wantonly negligent failure to meet this expectation.

To the extent claimant was discharged because he had failed to meet the employer’s more substantive expectation that he complete front-of-house tasks while working, the employer has also not met their burden to show that claimant failed to do so willfully or with wanton negligence. There is some dispute in the record about when the owner first notified claimant of this expectation. At hearing, the owner testified that he had told claimant to take on more front-of-house tasks at least “six months prior” to claimant’s last day of work, and that he had given claimant this direction several times. Transcript at 24. The employer provided no additional evidence to corroborate this account. By contrast, claimant testified that the owner never told claimant to perform front-of-house tasks until his last day of work, and that claimant had not been aware of the employer’s expectation that he perform said tasks prior to that point. Transcript at 16–17, 31. It is not clear from the record exactly what, if anything, the owner told claimant on his last day of work, or even if the owner was present at the restaurant that day.

Given this ambiguity, the overall factual dispute between the parties, and the lack of corroborating evidence to support either parties’ account, the employer has not shown, by a preponderance of the evidence, that claimant knew or had reason to know that he was expected to perform specific tasks at work that he then failed to perform. As such, the employer has not met their burden to show that claimant’s failure to meet the employer’s expectations regarding the performance of front-of-house work was the result of either willful or wantonly negligent conduct.

For the above reasons, claimant was discharged, but not for misconduct, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 26-UI-335203 is affirmed.

S. Serres and D. Hettle;

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<sup>1</sup> *See e.g. Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

A. Steger-Bentz, not participating.

**DATE of Service: September 2, 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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