

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0671

Reversed
No Disqualification

Orden Revocada
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 June 10, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective March 22, 2026 (decision # L0018018805).² Claimant filed a timely request for hearing. On July 14, 2026, ALJ Frank conducted a hearing interpreted in Spanish, and on July 16, 2026 issued Order No. 26-UI-335189, affirming decision # L0018018805. On July 23, 2026, claimant filed an application for review of Order No. 26-UI-335189 with the Employment Appeals Board (EAB).

HISTORIA DEL PROCEDIMIENTO: El 10 de junio de 2026, el Departamento de Empleo de Oregon (el Departamento) notificó una decisión administrativa concluyendo que la reclamante dejó

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 # L0018018805 stated that claimant was denied benefits from March 22, 2026 to April 3, 2027. However, decision # L0018018805 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 22, 2026, and until she earned four times her weekly benefit amount. See ORS 657.176.

La decisión # L0018018805 dijo que a la reclamante se le negaron los beneficios desde el 22 de marzo de 2026 hasta el 3 de abril de 2027. Sin embargo, la decisión # L0018018805 debería haber dicho que la reclamante estaba descalificada para recibir beneficios a partir del domingo 22 de marzo de 2026 y hasta que ella ganara cuatro veces su cantidad de beneficios semanales. ORS 657.176.

voluntariamente al trabajo sin una causa justificada y, por lo tanto, quedaba descalificada para recibir beneficios de seguro de desempleo a partir del 22 de marzo de 2026 (decisión # L0018018805).² La reclamante presentó una solicitud de audiencia a tiempo. El 14 de julio de 2026, el juez administrativo Frank llevó a cabo una audiencia con interpretación en español, y el 16 de julio de 2026 emitió la Orden No. 26-UI-335189, confirmando la decisión # L0018018805. El 23 de julio de 2026, la reclamante presentó una solicitud de revisión de la Orden No. 26-UI-335189 ante la Junta de Apelaciones de Empleo (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer 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 claimant's reasonable control prevented her 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).

ARGUMENTO POR ESCRITO: *La reclamante no dijo que había proporcionado una copia de su argumento por escrito al empleador en este caso, de acuerdo con Regla Administrativa de Oregón (OAR) 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contenía nueva información que no era parte del expediente de este caso, y la reclamante no demostró que razones o circunstancias fuera de su control le impidieron ofrecer esa información durante la audiencia, de acuerdo con OAR 471-041-0090 (13 de mayo de 2019). EAB consideró únicamente la información recibida como evidencia en la audiencia. Véase ORS 657.275(2).*

FINDINGS OF FACT: (1) Everclear Cleaning Services, Inc. employed claimant as a cleaner from March 2023 through March 27, 2026.

(2) In 2024, claimant underwent surgery to remove a brain tumor, but the surgery was unsuccessful and portions of the tumor remained. Claimant thereafter experienced frequent headaches that eventually affected her ability to work.

(3) On Friday, March 6, 2026, claimant sent a text message to the employer, stating, "I'm letting you know that starting today, I am giving my three weeks' notice. My last day will be March 31st. My reasons are health-related." Transcript at 8. Claimant sent the message because she believed that her condition had worsened to the point where she could no longer continue to perform her work. Had claimant requested a period of unpaid leave instead of resigning, the employer would have considered the request.

(4) On Friday, March 27, 2026, claimant worked what was to be her final shift for the employer. On March 30, 2026, claimant reported for work as scheduled but was given her final paycheck and not permitted to work. The employer had construed claimant's resignation notice as being effective exactly three weeks from the date it was sent, March 27, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

CONCLUSIONES Y RAZONES: *La reclamante fue despedida, pero no por mala conducta.*

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).

If a claimant notified their employer they would quit work on a specific date, and the quit would have been without good cause, but the employer discharged the claimant, not for misconduct, no more than 15 days before the date of the planned quit, then the separation from work is adjudicated as if the discharge had not occurred and the planned quit had occurred. ORS 657.176(7). However, the claimant is eligible for benefits for the week in which the actual discharge occurred through the week before the week of the planned quit. ORS 657.176(7).

On March 6, 2026, claimant gave notice of her intent to resign on March 31, 2026. Although claimant described this as “three weeks’ notice,” she specifically stated in the message that her last day of work would be March 31, 2026. The parties agreed that claimant last performed work on March 27, 2026. Claimant testified that she reported for work on her next regularly scheduled shift, March 30, 2026, but was given her final paycheck and not permitted to work by the supervisor at the worksite. Transcript at 6. The employer’s owner acknowledged that claimant’s text message stated that her last day would be March 31, 2026, but testified, “We assumed the 27th was her last day, and she worked that day and did not report back to work after that.” Transcript at 10. The owner also testified that he could not “speak to” what was discussed or had occurred between claimant and her supervisor “except to say that [claimant’s] last day of work was the 27th[.]” Transcript at 10. On this record, it is more likely than not that the events of March 30, 2026 occurred in accordance with claimant’s account, given the owner’s lack of personal involvement in, and knowledge of, what transpired that day.

The order under review disregarded the fact that claimant’s resignation notice stated that it would be effective on March 31, 2026, even though this was not disputed by the parties. *See* Order No. 26-UI-335189 at 2; Transcript at 8 (the employer’s witness reading the text message into the record). The order also failed to acknowledge claimant’s attempt to continue working for the employer on March 30, 2026. In part for these reasons, the order’s adjudication of the work separation as a voluntary leaving that occurred on March 27, 2026 is not supported by the record. *See* Order No. 26-UI-335189 at 3.

Claimant’s resignation notice specifying March 31, 2026 as her last day of work, combined with her reporting for work on March 30, 2026, showed that she was willing to continue working for the employer for an additional period of time after March 27, 2026. The record does not show that claimant had communicated otherwise to the employer. In contrast, the employer gave claimant her final paycheck when she reported for work on March 30, 2026 and did not allow her to work that shift, suggesting at hearing that this was because claimant’s resignation had become effective on March 27, 2026. Accordingly, claimant consistently communicated to the employer that she was willing to continue working for a period of time after March 27, 2026, but the employer did not allow her to do so. The work separation was therefore a discharge that occurred on March 27, 2026.

Because the discharge occurred within 15 days of a planned voluntary leaving, ORS 657.176(7) may apply. Therefore, both the discharge and the planned voluntary leaving must be analyzed to determine whether the work separation disqualifies claimant from receiving benefits.

Planned Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Depart.*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Depart.*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had a symptomatic brain tumor, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would not have continued to work for their employer for an additional period of time.

Claimant submitted notice of her resignation due to symptoms of a brain tumor that included frequent headaches. Claimant explained that a 2024 surgery to remove the tumor had been unsuccessful, and that it continued to be symptomatic after her return to work following the surgery. When asked at hearing about the timing of her resignation, claimant explained that she had needed to work following the surgery, but, “The tumor’s still there. The headaches are still there.” Transcript at 5. Claimant was not specifically asked whether her symptoms had changed or increased in the time since the surgery, or to clarify why she had not resigned earlier. However, it is reasonable to infer that some worsening of the condition had occurred by early March 2026 in order to prompt claimant to submit notice of her resignation when she did, and to cite “health related” reasons to the employer for doing so. It is also reasonable to infer, in the absence of evidence to the contrary, that claimant had exhausted available treatment options following the surgery without relief of her symptoms.

As such, it is more likely than not that under these circumstances a reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant’s would not have continued to work for their employer for an additional period of time. That claimant felt, on March 6, 2026, that she was capable of working an approximately three-week notice period despite her symptoms is not inconsistent with claimant believing that her condition had progressed to the point where continuing to work for the employer beyond the end of March 2026 would be infeasible. Therefore, claimant faced a grave situation.

Furthermore, claimant did not have a reasonable alternative to quitting work when she did. While the employer may have considered granting claimant a period of unpaid leave had she requested it, this likely would not have resolved the grave situation she faced. The record does not suggest that claimant likely would have received any new or different treatment during such a period of leave, and therefore that her condition would have differed in any material respect upon returning from leave. Moreover, “[A] protracted, unpaid leave of absence is not a ‘reasonable alternative’ to leaving work and being unemployed; indeed it is not an alternative at all.” *Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980). Accordingly, claimant’s planned voluntary leaving was for a reason of such gravity that she had no reasonable alternative but to leave work, and was therefore with good cause. Thus, ORS 657.176(7) is not applicable, and the standard discharge analysis applies.

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 because they mistakenly assumed that she had intended her resignation to be effective at the end of her March 27, 2026 shift, rather than March 31, 2026 as the notice stated. The employer’s error in this regard did not constitute a willful or wantonly negligent violation of an employer policy on claimant’s part. As the employer maintained at hearing that the work separation was a voluntary leaving rather than a discharge, they did not advance any alternative reason for her discharge, and the record does not suggest one. 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 unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-335189 is set aside, as outlined above.

DECISIÓN: *La Orden de la Audiencia 26-UI-335189 se deja a un lado, de acuerdo a lo indicado arriba. La reclamante fue despedida, pero no por mala conducta.*

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

DATE of Service: September 4, 2026

FECHA de Servicio: 4 de septiembre de 2026

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

NOTA: *Esta decisión revoca una orden judicial que niega los beneficios a la reclamante. Tenga en cuenta que, en la mayoría de los casos, el pago de los beneficios adeudados tardará aproximadamente una semana en completarse.*

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.surveymizmo.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.surveymizmo.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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