

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0674

Reversed
Disqualification

PROCEDURAL HISTORY: On June 24, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective May 17, 2026 (decision # L0018221821).¹ Claimant filed a timely request for hearing. On July 15, 2026, ALJ Bender conducted a hearing, and on July 23, 2026 issued Order No. 26-UI-335710, reversing decision # L0018221821 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On July 27, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Coos County School District #9 employed claimant as an educational assistant at one of their schools from October 29, 2018 through May 22, 2026.

(2) The employer maintained an attendance policy which, in relevant part, prohibited employees from taking unpaid leave without authorization. The policy permitted the employer to approve or deny requests for unpaid leave based on operational needs. This policy was contained in the employer's handbook and was also memorialized in the collective bargaining agreement with claimant's union, and claimant was aware of it.

(3) On May 13, 2026, claimant submitted to the employer a leave request for May 18, 19, and 20, 2026, all days she was scheduled to work. Claimant sought to take the time off to attend a golf tournament in which her teenage daughter was competing, and which was being held in a different part of the state. The employer's human resources (HR) director denied claimant's request on the same day, as claimant had no accrued paid leave remaining at that time, and the time off would therefore be unpaid; and because the district had an excess of other employees who were absent at the time. The HR director also

¹ Decision # L0018221821 stated that claimant was denied benefits from May 17, 2026 to May 29, 2027. However, decision # L0018221821 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 17, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

told claimant that her “employment and benefits with [the employer] may be affected by further absences.” Exhibit 1 at 7. Claimant received the denial, understood that her request had not been approved, and also understood that she could be disciplined or discharged if she took the requested days off.

(4) On May 18, 2026, despite the denial of her leave request, claimant attended her daughter’s tournament, and was absent from work that day as a result. On May 19, 2026, claimant was also absent from work, as she was still at the tournament. On the same day, the HR director sent claimant an email notifying her that she was required to be at work on May 20, 2026, that a pre-dismissal meeting was also scheduled for May 20, 2026, and that, regardless, claimant was expected to be at work that day. On May 20, 2026, claimant was absent from work, as she was still at the tournament.

(5) On May 22, 2026, the employer discharged claimant because she had been on leave without pay from May 18 through 20, 2026, and had failed to obtain authorization for those absences.

(6) Prior to the May 2026 absences, claimant had not previously violated the employer’s prohibition on taking unauthorized unpaid leave.

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).

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 because she had been on leave without pay from May 18 through 20, 2026, and had failed to obtain authorization for those absences. Claimant was aware of the employer’s policy which prohibited employees from taking unpaid leave without authorization, and was further aware that her request to take unpaid leave to attend her daughter’s golf tournament had been denied. As such, claimant knew that her conduct directly violated the employer’s policy. Therefore, as the order

under review acknowledged, claimant's conduct was a willful violation of the employer's standards of behavior. Order No. 26-UI-335710 at 3.

The order under review also concluded that claimant's conduct was not misconduct because it was an isolated instance of poor judgment, as claimant "had not previously violated the employer's attendance policy[.]" Order No. 26-UI-335710 at 3. The record does not support this conclusion.

Despite the fact that the three absences were all taken on the same trip and for the same general purpose, it can be reasonably inferred from the record that claimant made a conscious choice each day to continue being absent from work. Likewise, the record does not show that she would have been unable to return home to attend work after either the first or the second absence. Rather, the record shows that claimant decided to continue to remain absent from work through May 20, 2026, despite receiving notice from the HR director that she was expected to return to work on May 20, 2026 and that a pre-dismissal meeting had been scheduled for that day.

As such, claimant's conduct amounted to a repeated act and was not isolated. Because claimant's conduct was not isolated, it cannot be considered an isolated instance of poor judgment, but was instead misconduct.

For the above reasons, claimant was discharged for misconduct, and therefore is disqualified from receiving unemployment insurance benefits effective May 17, 2026.

DECISION: Order No. 26-UI-335710 is set aside, as outlined above.

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

DATE of Service: September 11, 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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