

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0676

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 11, 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 15, 2026 (decision # L0017440409).¹ Claimant filed a timely request for hearing. On July 1, 2026, ALJ Murray conducted a hearing, and on July 6, 2026 issued Order No. 26-UI-334292, affirming decision # L0017440409. On July 27, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Herban, LLC employed claimant as a retail cannabis salesperson from September 15, 2025 through March 19, 2026.

(2) The employer expected their employees who handled cash to deposit the contents of their till into the employer's safe at the end of each shift. Claimant understood this expectation. The cash was to be placed in an envelope, then the envelope dropped through a slot in the top of a small safe contained within a larger safe. Only one of the employer's owners had access to open the smaller safe. In early March 2026, the employer transferred claimant from one of their stores to another, but the cash deposit procedure was the same at both stores.

¹ Decision # L0017440409 stated that claimant was denied benefits from March 15, 2026 to March 13, 2027. However, decision # L0017440409 should have stated that claimant was disqualified from receiving benefits beginning March 15, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

(3) On March 15, 2026, at the end of claimant's shift, claimant put the cash from her till in an envelope and went to the open larger safe to deposit it. On the morning of March 16, 2026, the owner opened the small safe but did not locate claimant's envelope in it. When claimant reported for work that day, the owner questioned claimant about it, and she initially stated that she had made the deposit normally. In trying to imagine how the envelope could have gone missing, claimant suggested that she might have inadvertently mixed the envelope into her belongings when leaving work the previous night and had forgotten to put it into the safe. The employer directed claimant to go home and look for it near the end of her shift. After doing so, claimant reported back that the envelope was not there.

(4) On the morning of March 17, 2026, the owner did not check the contents of the small safe. Claimant worked that day, and at the end of her shift deposited only that day's cash receipts in the small safe. Another employee deposited his cash receipts after claimant. After claimant made her deposit, she used her phone to photograph the store's video surveillance monitors for reasons unrelated to the missing deposit envelope.

(5) After the store closed on March 17, 2026, the owner opened the small safe and discovered claimant's deposit envelopes from March 15, 16, and 17, 2026. The owner reviewed surveillance footage from the end of claimant's shifts on March 15 and 17, 2026, which for each day depicted claimant standing at the open larger safe with her back to the camera for approximately 10 to 15 seconds, though her interactions with the smaller safe could not be seen. The March 17, 2026 footage also depicted claimant photographing the surveillance monitors. The owner believed that it should have only taken claimant three to five seconds to make each deposit, and he was therefore suspicious of the length of time claimant was at the safe on these two occasions. The owner also believed that claimant photographing the surveillance monitors demonstrated consciousness of guilt regarding the untimely deposit for March 15, 2026.

(6) On March 18, 2026, the employer texted claimant that he had video footage in which claimant had "pretended to drop" the March 15, 2026 envelope into the safe; that on March 17, 2026, he had discovered the March 15, 2026 envelope on top of the March 16 and 17, 2026 envelopes in the safe; and that he "literally watched [claimant] do these things" on video. Exhibit 3 at 29. Claimant replied that those allegations were "wild" and that "[n]one of that about the drop is true so [she would] love to watch the video with [him.]" Exhibit 3 at 29. Claimant then suggested that the March 15, 2026 envelope might have been found and placed in the safe by another employee on March 17, 2026, or might have been stuck in the safe near the slot when it was originally deposited and dislodged by one of the subsequent deposits. Additionally, claimant explained to the owner that she photographed the surveillance monitors in an attempt to determine if there was any place in the store where she could cry without being observed by the cameras or her coworkers, as she was upset about having been transferred between stores and anticipated becoming emotional at times. In response, the owner refused to show claimant any video footage but reiterated that he had watched her "pretend" to drop the March 15, 2026 deposit in the safe and that she was therefore being discharged. Claimant did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Claimant was discharged, but not 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).

The employer discharged claimant based on the owner’s belief that claimant had pretended to deposit the March 15, 2026 cash receipts and kept them for herself, before actually depositing them on March 17, 2026. The employer reasonably expected that their employees would deposit cash receipts at the end of each shift, and claimant understood this expectation. The order under review concluded that the employer proved that claimant willfully kept the March 15, 2026 deposit for herself before later returning it while under investigation. Order No. 26-UI-334292 at 4. The record does not support this conclusion.

At hearing, the parties disputed how the March 15, 2026 deposit came to be in the safe after the close of business on March 17, 2026, and where it had been prior to that time. Claimant testified that she made the March 15, 2026 deposit at the end of that shift “as usual,” and that she remembered opening the larger safe at that time to make the deposit. Transcript at 15, 18. Claimant further testified that after learning the following day that the deposit was missing, she truthfully told the owner that she did not know where the deposit was, but suggested that she may have inadvertently picked it up with her belongings when leaving work because her “memory’s not always great,” and she was adjusting to procedures at the new store. Transcript at 19. Claimant also testified that there was nothing unusual about her March 17, 2026 deposit, and that she did not know how the March 15, 2026 came to be found in the safe later that day. Transcript at 19-20. Claimant suggested at hearing, as she had previously to the owner, that the deposit may have been temporarily stuck in the safe and testified that she had heard of this having happened to other employees’ deposits. Transcript at 19-20. Additionally, claimant testified that photographing the surveillance monitors was unrelated to the missing deposit, and that she was only searching for a place where she would not be observed crying, as she anticipated getting emotional at work in the future for various reasons. Transcript at 16-17.

In contrast, the owner testified to his reasons for believing that claimant had willfully taken the March 15, 2026 deposit while pretending to have dropped it in the safe and, after being confronted about it being missing, placed it in the safe on March 17, 2026. The owner testified that video he reviewed showed claimant standing in front of the safe for 10 to 15 seconds during the purported March 15 and 17, 2026 deposits, which he found suspicious because he estimated it should only take three to five seconds to make a deposit. Transcript at 6, 11. The owner conceded that the video, which was not offered as evidence or shown to claimant, did not on either occasion specifically depict claimant’s activities while she was standing in front of the safe, as only her back was visible. Transcript at 12. The owner also testified that the order of the envelopes piled within the safe from bottom to top when it was opened on March 17, 2026 consisted of the deposits of March 16, 17, and 15, 2026, respectively, which he asserted was evidence of claimant depositing them in that order. Transcript at 33-34. Additionally, the employer suggested that claimant’s stated reason for photographing the surveillance monitors was implausible when considering the availability of spaces around the workplace that would obviously not

be under surveillance, such as the restroom or her own vehicle, and that a more plausible explanation was that claimant's interest in the system was motivated by a need to invent an explanation for the sudden appearance of the March 15, 2026 deposit that would not be contradicted by video evidence. *See* Transcript at 7, 28.

In weighing this evidence, claimant's first-hand testimony that she timely made the March 15, 2026 deposit and did not know why it was temporarily missing or how it appeared in the safe on March 17, 2026 is not outweighed by the circumstantial evidence in support of the employer's theory that claimant misappropriated the deposit but then returned it when facing an investigation. While the circumstantial evidence could potentially support the employer's theory, it could also support claimant's theories that the deposit became stuck in the safe and dislodged by a subsequent deposit, or misplaced in or around the safe then discovered and deposited by someone else after the safe was checked on March 16, 2026. As such, the employer has not met their burden of showing by a preponderance of the evidence that claimant willfully or with wanton negligence failed to timely make the March 15, 2026 deposit. Accordingly, claimant's discharge was not 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-334292 is set aside, as outlined above.

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

DATE of Service: September 10, 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.

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

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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.

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