

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0680

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 14, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for committing a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy, and that claimant was disqualified from receiving benefits effective October 12, 2025 (decision # L0014076897).¹ Claimant filed a timely request for hearing. On January 21, 2026, the Office of Administrative Hearings (OAH) mailed the parties notice that a hearing was scheduled for February 3, 2026. On February 3, 2026, claimant failed to appear for the hearing, and ALJ Blam issued Order No. 26-UI-319049, dismissing claimant's request for hearing due to his failure to appear.

Later on February 3, 2026, claimant filed a request to reopen the hearing. On March 11, 2026, notice was mailed to the parties that a hearing was scheduled for March 25, 2026. On March 25, 2026, claimant failed to appear for the hearing, and ALJ Blam issued Order No. 26-UI-324977, dismissing claimant's request to reopen the February 3, 2026 hearing due to his failure to appear, leaving Order No. 26-UI-319049 undisturbed. On March 31, 2026, claimant filed a request to reopen the March 25, 2026 hearing. On April 29, 2026, ALJ Janzen conducted a hearing, and on April 30, 2026 issued Order No. 26-UI-328818, denying claimant's request to reopen the March 25, 2026 hearing and leaving Orders No. 26-UI-324977 and 26-UI-319049 undisturbed.

On May 19, 2026, claimant filed an application for review of Order No. 26-UI-328818 with the Employment Appeals Board (EAB). On June 29, 2026, EAB issued EAB Decision 2026-EAB-0529, reversing Order No. 26-UI-328818 by allowing claimant's requests to reopen the March 25, 2026 and February 3, 2026 hearings and remanding for a hearing on the merits of decision # L0014076897. On July 21, 2026, ALJ Janzen conducted a hearing, and on July 24, 2026, issued Order No. 26-UI-335887,

¹ Decision # L0014076897 stated that claimant was denied benefits from October 12, 2025 to June 27, 2026. However, decision # L0014076897 should have stated that claimant was disqualified from receiving benefits beginning October 12, 2025, and until he earned four times his weekly benefit amount. See ORS 657.176.

affirming decision # L0014076897. On July 29, 2026, claimant filed an application for review of Order No. 26-UI-335887 with EAB.

EVIDENTIARY MATTER: On August 16, 2026, claimant submitted to EAB a statement signed by a representative of the Hazelden Betty Ford Foundation Hazelden Springbrook Center showing that he had attended the facility's inpatient alcohol treatment program from September 9, 2025 through September 28, 2025.

EAB construes claimant's submission as a request that EAB consider additional evidence under OAR 471-041-0090(1)(b) (May 13, 2019). Under OAR 471-041-0090(1)(b), "Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that: (A) The additional evidence is relevant and material to EAB's determination, and (B) Factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record."

Claimant's request is granted. The signed statement is relevant and material to EAB's determination because it goes to whether a particular provision of law, ORS 657.176(8)(b)(A), applies in this case. The record shows that factors or circumstances beyond claimant's reasonable control prevented him from offering the signed statement into the hearing record. At hearing, which occurred on July 21, 2026, the ALJ gave claimant until close of business on July 23, 2026, to submit the signed statement to OAH. Transcript at 21. However, when claimant contacted the facility on July 21, 2026, he was told that the signed statement could not be provided to him until July 24, 2026. Exhibit 10 at 2. Therefore, it was not possible for claimant to provide the signed statement to OAH within the time frame provided by the ALJ.

The signed statement has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Tigard Tualatin School District 23J employed claimant, most recently as a bookkeeper, from April 16, 2018 until October 17, 2025.

(2) The employer had a written drug and alcohol policy that prohibited employees from being under the influence of alcohol at work, and from testing positive for alcohol at work. The policy stated that there was zero tolerance for an employee to be under the influence of alcohol at work. The employer's collective bargaining agreement with claimant's union provided that they could require a medical examination of an employee at the employer's expense if they believed that the employee was unable to perform their job duties. During claimant's employment, the employer provided copies of their written drug and alcohol policy and the collective bargaining agreement to claimant.

(3) On September 8, 2025, claimant was at work. Some of claimant's colleagues and his supervisor noticed that claimant was slurring his words when he spoke and smelled like alcohol. The employer requested that claimant take a breath test for alcohol, and claimant agreed to do so. The employer administered two breath tests that day. The first returned a blood alcohol content of .173, and the second returned a blood alcohol content of .171.

(4) On September 9, 2025, claimant entered the Hazelden Betty Ford Foundation Hazelden Springbrook Center's inpatient alcohol treatment program. Claimant participated in the program from September 9, 2025 until September 28, 2025. Upon claimant entering the program on September 9, 2025, the employer placed him on paid administrative leave. On October 1, 2025, claimant returned to work and his paid administrative leave ended. Thereafter, the employer investigated claimant's conduct on September 8, 2025, and, on October 17, 2025, discharged claimant for testing positive for alcohol on September 8, 2025.

(5) The Hazelden Betty Ford Foundation Hazelden Springbrook Center's inpatient alcohol treatment program is a program authorized and licensed by the State of Oregon.² Claimant provided to the Department a signed statement by an authorized representative of the program that claimant had participated in the treatment program by submitting to EAB on August 16, 2026, a statement signed by a representative showing that claimant had attended the facility's alcohol treatment program from September 9, 2025 through September 28, 2025.

CONCLUSIONS AND REASONS: Claimant did not commit a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy.

ORS 657.176(2)(h) requires a disqualification from unemployment insurance benefits if the individual has committed a disqualifying act as described in ORS 657.176(8) or (9). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

* * *

(F) Tests positive for alcohol, cannabis or an unlawful drug in connection with employment[.]

For purposes of ORS 657.176(8), "an individual 'tests positive' for alcohol, cannabis, or an unlawful drug when the test is administered in accordance with the provisions of an employer's reasonable written policy or collective bargaining agreement, and at the time of the test, either (A) the amount of drugs, cannabis, or alcohol determined to be present in the individual's system equals or exceeds the amount prescribed by such policy or agreement, or (B) the individual has any detectable level of drugs, cannabis, or alcohol present in the individual's system if the policy or agreement does not specify a cut off level." OAR 471-030-0125(2)(e) (January 11, 2018). "Connection with employment" as used in ORS 657.176(8) means "where such positive test affects or has a reasonable likelihood of affecting the employee's work, the employer's interest, or workplace." OAR 471-030-0125(2)(h).

² EAB has taken notice of this fact, which is a generally knowable fact. OAR 471-041-0090(1). A copy of the information is available to the parties at: <https://www.naatp.org/resources/addiction-industry-directory/3049/hazelden-betty-ford--newberg-or>. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

OAR 471-030-0125(3) provides that for purposes of ORS 657.176(9), (10), and 657.176(13),³ a written employer policy is reasonable if:

- (a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and
- (b) The policy does not require the employee to pay for any portion of the test; and
- (c) The policy has been published and communicated to the individual or provided to the individual in writing; and
- (d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:
 - (A) Probable cause for requiring the individual to submit to the test[.]

* * *

No employer policy is reasonable if the employer does not follow their own policy. OAR 471-030-0125(6). Breathalyzer tests for alcohol must be conducted in accordance with ORS 659A.300 and ORS 659.840. OAR 471-030-0125(10).

Subject to an exception not applicable here, “an individual is not considered to have committed a disqualifying act under this subsection if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug, cannabis or alcohol rehabilitation program and provides documentation of participation in the program to the department.” ORS 657.176(8)(b)(A). OAR 471-030-0125(2)(i) provides the following definitions applicable to ORS 657.176(8)(b)(A):

- (A) “Recognized drug, cannabis, or alcohol rehabilitation program” means a program authorized and licensed by the State of Oregon, or another state.
- (B) “Documentation of participation in the program” means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program.
- (C) “Participation” means to be engaged in a course of treatment through a recognized drug, cannabis, or alcohol rehabilitation program.

The order under review concluded that claimant was disqualified from receiving benefits because he committed a disqualifying act under ORS 657.176(8)(b)(F). Order No. 26-UI-335887 at 7. The record does not support this conclusion because claimant met the elements of ORS 657.176(8)(b)(A), and therefore did not commit a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy.

³ The citations in this rule to ORS 657.176(9), (10), and (13) have not yet been updated to account for legislative changes which renumbered certain paragraphs under ORS 657.176. Therefore, any reference under the rule to ORS 657.176(9), (10), or (13) should be read as ORS 657.176(8), (9), or (12), respectively.

The employer's written policy was reasonable as it prohibited employees from being under the influence of alcohol in the workplace, did not require employees to pay for testing, and had been provided to claimant in writing. Further, here, the employer had probable cause to require claimant to submit to the tests on September 8, 2025 as he had been slurring his words and smelled like alcohol on that date. The test results showing a blood alcohol content of .173 and .171 were positive results, as the policy stated that there was zero tolerance for an employee to be under the influence of alcohol at work,⁴ which suggests that the policy contemplated any level of alcohol above zero to be a positive test result. To the extent this did not prescribe a specific cut off level, any detectable level of alcohol would have sufficed as positive result pursuant to OAR 471-030-0125(2)(e)(B). The positive test results were in connection with claimant's employment as they occurred while claimant was at work and exhibiting obvious signs of alcohol intoxication there.

Nevertheless, claimant did not commit a disqualifying act because ORS 657.176(8)(b)(A) applies to this case. Claimant participated in a recognized alcohol rehabilitation program within ten days after the date of the separation. In this case, the separation is treated as having occurred on September 9, 2025, the date that the employer placed claimant on paid administrative leave.⁵ On that date, and continuing until September 28, 2025, claimant participated in an inpatient alcohol treatment program at Hazelden Betty Ford Foundation Hazelden Springbrook Center. See EAB Exhibit 1 at 1. This program was authorized and licensed by the State of Oregon. Claimant provided documentation of his participation in the program to the Department by, on August 16, 2026, submitting to EAB a signed statement by an authorized representative showing that he had participated in the program.

Thus, ORS 657.176(8)(b)(A) applies, and claimant therefore did not commit a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy. Claimant is not subject to disqualification from unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-335887 is set aside, as outlined above.

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

DATE of Service: September 17, 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.

⁴ See OAR 471-030-0125(2)(c) ("[A]n individual is "under the influence" of intoxicants if, at the time of a test administered in accordance with the provisions of an employer's reasonable written policy or collective bargaining agreement, the individual has any detectable level of drugs, cannabis, or alcohol present in the individual's system, unless the employer otherwise specifies particular levels of drugs, cannabis, or alcohol in its policy or collective bargaining agreement.").

⁵ It is warranted to consider the September 9, 2025 date that the employer placed claimant on administrative leave, rather than the October 16, 2025 date of claimant's discharge, as the date of the "separation" for purposes of ORS 657.176(8)(b)(A). This is so because OAR 471-030-0125(2)(i) does not define the term "separation" and it is evident from the language of ORS 657.176 that the statute differentiates between the concept of a "separation" and that of a "termination" or discharge. See ORS 657.176(1) ("An authorized representative . . . shall promptly examine each claim to determine whether an individual is subject to disqualification as a result of a *separation, termination, leaving, resignation or disciplinary suspension from work*, or as a result of failure to apply for or accept work, and shall promptly enter a director's decision[.]") (emphasis added).

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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