

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0689

Reversed & Remanded

PROCEDURAL HISTORY: On June 22, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant receiving unemployment insurance benefits effective March 8, 2026 (decision # L0018190278).¹ Claimant filed a timely request for hearing. On July 22, 2026, ALJ Wahl conducted a hearing, and on July 24, 2026 issued Order No. 26-UI-335853, reversing decision # L0018190278 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on discharge. On July 29, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of the employer's argument that were based on the hearing record.

The parties may offer new information such as that contained in the employer's written argument into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

¹ Decision # L0018190278 stated that claimant was denied benefits from April 5, 2026 to April 3, 2027. However, as decision # L0018190278 found that claimant quit on March 13, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 8, 2026, and until he earned four times his weekly benefit amount. See ORS 657.176.

FINDINGS OF FACT: (1) Housing Authority of Yamhill County employed claimant as a maintenance mechanic from March 17, 2020 through March 16, 2026.

(2) In April 2025, claimant was placed on a six-month performance improvement plan, which claimant subsequently completed.

(3) On approximately February 2, 2026, claimant was suspended for three days for alleged continuing performance issues, in accordance with a progressive discipline policy.

(4) On February 6, 2026, claimant was placed on paid administrative leave while a different suspected policy violation was investigated, which was alleged to have occurred on the day claimant was suspended but not discovered until after the suspension commenced. The investigation concluded that claimant had not violated policy. Claimant was allowed to return to work without discipline being imposed for that incident.

(5) The employer had a written policy requiring employees to submit to drug and alcohol testing if involved in a collision while driving an employer vehicle, and either damage to the vehicle exceeded \$1,000, or law enforcement determined the employee to be at fault for the collision. Claimant acknowledged receipt of this policy, most recently in April 2025. The policy was also part of a collective bargaining agreement applicable to claimant.

(6) On March 13, 2026, claimant was involved in a collision while driving an employer vehicle. Law enforcement determined that claimant was at fault for the collision, and damage to the vehicle exceeded \$1,000. Claimant did not submit to drug and alcohol testing immediately following the collision. The employer placed claimant on administrative leave based on his failure to submit to testing, and notified claimant's union representative that a pre-termination meeting was scheduled for March 17, 2026.

(7) Claimant's union representative contacted the employer to attempt to negotiate a separation agreement, but the employer was unwilling to negotiate and said that they intended to proceed with the pre-termination hearing as scheduled. The union representative therefore advised claimant to resign prior to the meeting to avoid being discharged. Claimant followed this advice, and on March 16, 2026 gave the employer notice of his resignation with immediate effect. Claimant did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Order No. 26-UI-335853 is set aside, and the matter remanded for further development of the record.

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 order under review concluded that the work separation was a discharge, despite findings of fact that claimant resigned on March 16, 2026 to avoid potentially being discharged at the March 17, 2026

meeting. Order No. 26-UI-335853 at 2-3. While the record supports these findings of fact, the work separation was a voluntary leaving under OAR 471-030-0038(2) because claimant was unwilling to continue in the employment relationship after March 16, 2026 to avoid the possibility of discharge, while the employer was willing to continue in the relationship for at least one additional day. Accordingly, the work separation was a voluntary leaving that occurred on March 16, 2026.

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 Dept.*, 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 Dept.*, 348 Or 605, 612, 236 P3d 722 (2010). Per OAR 471-030-0038(5)(b)(F), leaving work without good cause includes “[r]esignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct[.]”

A claimant has good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects. *McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010). A future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue, but it does bear on the gravity of the situation. *Dubrow v. Employment Dep’t.*, 242 Or App 1, 252 P3d 857 (2011).

Claimant quit work on March 16, 2026 because he faced a pre-termination hearing scheduled for the following day. Claimant had received progressive discipline under the employer’s policies, including a three-day suspension during the previous month. On March 13, 2026, claimant was involved in a collision while driving one of the employer’s vehicles. The employer alleged that under their written policies and the terms of a collective bargaining agreement, the circumstances of the collision provided probable cause to require claimant to immediately submit to drug and alcohol testing, and claimant did not submit to such testing. The employer suspended claimant from work, scheduled the pre-termination meeting, and refused to negotiate an alternative to proceeding with that meeting. In considering these circumstances, claimant’s recent history of progressive discipline, and the advice claimant’s union representative, it is more likely than not that claimant would have been discharged on or shortly after March 17, 2026 had he not quit work. The discharge claimant faced was therefore imminent and inevitable.

On remand, inquiry should be made into whether claimant being discharged for the alleged policy violation would have significantly impacted his prospects for future employment with other employers, as compared to the effect of claimant having resigned to avoid such a discharge. Furthermore, if the record on remand supports that claimant resigned to avoid a discharge that would have substantially impacted his future employment prospects, additional inquiry should be made into whether the discharge would have been for misconduct.²

² “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]anton 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

Although the order under review contained a misconduct analysis and concluded that claimant had not willfully or with wanton negligence violated an employer policy with respect to the March 13, 2026 incident, the record was insufficiently developed to support this conclusion. Order No. 26-UI-335853 at 3-4. On remand, development of the record on this point should include inquiry of both parties as to the specific circumstances of the collision, as well as the employer's efforts immediately following the collision to get claimant to submit to drug and alcohol testing, to determine whether either issue involved a willful or wantonly negligent violation of an employer expectation. Claimant testified that he did not submit to the test because he was "sh[aken] up" by the collision and "didn't think about it." Audio Record at 26:58. On remand, this testimony should be clarified to determine whether claimant was asserting that he had forgotten and was not reminded that the employer required testing under such circumstances, or that he merely failed to consider the consequences of refusing a request by the employer to submit to the test until after the opportunity to take the test had passed.

Additionally, the record suggests that claimant's work separation may have resulted from claimant committing a disqualifying act as described in ORS 657.176(8) or (9). **This is an additional issue to be decided at the remand hearing that should be included in the notice of hearing.** As discussed in greater detail below, the record on remand should be developed, and a conclusion reached, as to that issue, regardless of whether the record separately supports a disqualification from benefits for claimant voluntarily leaving work without good cause.

Disqualifying Act. A claimant is disqualified from receiving benefits if they have committed a disqualifying act as described in ORS 657.176(8) or (9). ORS 657.176(2)(h). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

- (A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;
- (B) Fails or refuses to take a drug, cannabis or alcohol test as required by the employer's reasonable written policy [or]
- (C) Refuses to cooperate with or subverts or attempts to subvert a drug, cannabis or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:
 - (i) Refusal or failure to complete proper documentation that authorizes the test;
 - (ii) Refusal or failure to sign a chain of custody form;
 - (iii) Presentation of false identification;

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).

(iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is identified by a testing facility; or

(v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen[.]

* * *

OAR 471-030-0125 (January 11, 2018)³ states:

* * *

(2) Definitions. For the purposes of this rule:

(a) For purposes of ORS 657.176(9), “workplace” means the employer's premises or any place at or in which an individual performs services for the employer or otherwise acts within the course and scope of employment.

(b) For purposes of ORS 657.176(9), an individual “fails or refuses to take” a drug, cannabis, or alcohol test when the individual does not take the test as directed by the employer in accordance with the provisions of an employer's reasonable written policy or collective bargaining agreement.

* * *

(3) For purposes of ORS 657.176(9), (10), and 657.176(13), 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; or

(B) The policy provides for random, blanket or periodic testing.

³ The citations in this rule to ORS 657.176(9), (10), and (13) have not yet been updated to account for recent 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.

(4) Probable Cause for Testing. For purposes of ORS 657.176(9), an employer has probable cause to require an employee to submit to a test for drugs, cannabis, alcohol, or a combination thereof if:

- (a) The employer has, prior to the time of the test, observable, objective evidence that gives the employer a reasonable basis to suspect that the employee may be impaired or affected by drugs, cannabis, or alcohol in the workplace. Such evidence may include, but is not limited to, abnormal behavior in the workplace, a change in productivity, repeated tardiness or absences, or behavior which causes an on-the-job injury or causes substantial damage to property; or
- (b) The employer has received reliable information that a worker uses or may be affected by drugs, cannabis, or alcohol in the workplace; or
- (c) Such test is required by applicable state or federal law, or an applicable collective bargaining agreement that has not been declared invalid in final arbitration; or
- (d) Such test is required or allowed pursuant to a reasonable agreement.

* * *

(6) For purposes of ORS 657.176(9), (10), and (13), no employer policy is reasonable if the employer does not follow their own policy.

* * *

(9) The employee is discharged or suspended for committing a disqualifying act if:

- (a) The employee violates or admits a violation of a reasonable written employer policy governing the use, sale, possession or effects of drugs, cannabis, or alcohol in the workplace; unless in the case of drugs the employee can show that the violation did not result from unlawful drug use.

* * *

* * *

Claimant's impending discharge was due to the employer's belief that on March 13, 2026, claimant failed to submit to a probable cause test for alcohol and drug use in violation of applicable policies. If this occurred, it could constitute a disqualifying act as described in ORS 657.176(8) or (9). On remand, inquiry should be made to determine the details of the employer's written policy, preferably by reviewing a written copy submitted by the employer or claimant prior to the hearing in accordance with the instructions on the notice of hearing. The inquiry should then focus on whether the policy was "reasonable" under the criteria in OAR 471-030-0125(3); whether the employer had probable cause to require testing under OAR 471-030-0125(4); whether the employer followed the terms of their policy; whether claimant failed to comply with the policy, including by refusing or failing to submit to a

required test; and any other factors relevant to this issue. It should be noted that ORS 657.176(8) does not require proof that claimant acted willfully or with wanton negligence in committing a disqualifying act.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to determine whether claimant voluntarily quit work with good cause, or committed a disqualifying act as described in ORS 657.176(8) or (9), Order No. 26-UI-335853 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-335853 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 15, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-335853 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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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