

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

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0690

Reversed
No Disqualification

PROCEDURAL HISTORY: On May 22, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was therefore not disqualified from receiving unemployment insurance benefits based on the discharge (decision # L0017660764). The employer filed a timely request for hearing. On July 17, 2026, ALJ Christon conducted a hearing, and on July 22, 2026 issued Order No. 26-UI-335610, reversing decision # L0017660764 by concluding that claimant was discharged for misconduct and therefore disqualified from receiving benefits effective March 22, 2026. On August 1, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she 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).

FINDINGS OF FACT: (1) Fred Meyer Stores, Inc. employed claimant from March 8, 2018 through March 24, 2026, most recently as a grocery receiving clerk.

(2) The employer provided safety training regarding the use of pallet jacks to some employees, including claimant, and expected those employees to follow the safety guidelines from the training. This included not letting go of a pallet jack while in use, such that it could continue moving on its own. The employer also expected their employees to treat others respectfully, and claimant understood this expectation.

(3) On April 28, 2025, claimant became upset and used foul language within the hearing of customers and other employees, though it was not directed at any particular person. Around the same time, claimant was pushing a large merchandise cart and it accidentally collided with another employee. Claimant was suspended from work for three days for her actions that day.

(4) On March 2, 2026, claimant cleared a path through which she intended to transport a pallet of water using a pallet jack. Moments later, claimant's supervisor moved two pallets into the path claimant had just cleared as claimant was transporting the water. Claimant and the supervisor had had a contentious relationship for some time, and claimant believed that the supervisor had done this deliberately. Out of "frustration" at her supervisor's actions, claimant let go of the pallet jack, allowing it to roll approximately two to six inches on its own, and said, "[Y]ou deal with it[.]" Transcript at 18. The pallet jack was not close enough to any person or merchandise to pose a risk of injury or damage by being allowed to move on its own. Approximately five to ten minutes later, claimant encountered two boxes containing packages of expired pita chips. Claimant's supervisor should have marked the boxes with instructions for how claimant was to dispose of them, but failed to do so. Claimant "slammed the boxes down on the ground" approximately two feet away from her supervisor, said, "[Y]ou deal with it," and walked away. Transcript at 25. Claimant was then told to take a break to calm down, which she did.

(5) On March 24, 2026, the employer discharged claimant due to her conduct on March 2, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged for an isolated instance of poor judgment, and 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).

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 for her actions on March 2, 2026, which included violating safety guidelines for use of a pallet jack, and treating her supervisor disrespectfully. The employer reasonably expected that their employees would not let go of a pallet jack while in use, such that it would continue moving on its own, and that their employees would not act disrespectfully toward others. Claimant did not dispute that out of frustration over her supervisor's actions, she intentionally let go of the moving pallet jack and slammed down boxes of merchandise in front of her supervisor, each time telling her supervisor to "deal with it." Claimant also did not dispute that these actions violated the employer's expectations. As claimant acted consciously and with evident disregard for the consequences of her

actions, knowing that they would probably violate the employer's reasonable expectations, claimant acted with wanton negligence.

However, isolated instances of poor judgment are not misconduct. The order under review concluded that claimant's conduct was not "isolated" within the meaning of the rule because she separately violated two employer expectations on March 2, 2026, and had also violated employer expectations regarding safety and treating others respectfully on April 28, 2025. Order No. 26-UI-335610 at 3. The record does not support the conclusion that claimant's conduct was not isolated within the meaning of the rule.

Whether an isolated instance of poor judgment occurred depends on "whether the incident was a 'single occurrence in the employment relationship,' and not whether the incident involved more than one component 'act' by the employee." *MacKillop v. Employment Dept.*, 172 Or App 207, 18 P3d 461 (2001) citing *Perez v. Employment Dept.*, 164 Or App 356, 992 P2d 460 (1999) (holding that a claimant's failure to follow a work directive followed by an outburst when confronted with that failure amounted to nothing more than a single occurrence in the employment relationship that was not so egregious as to put it beyond the realm of poor judgment). Here, claimant failed to follow a safety guideline involving the pallet jack that did not pose an immediate threat to people or property, and less than ten minutes later, while still frustrated with her supervisor, slammed two boxes of expired product to the ground in front of her supervisor as a demonstration of that frustration. Under these circumstances, claimant's actions on March 2, 2026 were a single occurrence in the employment relationship.

The employer additionally alleged that claimant committed policy violations on April 28, 2025. These violations also implicated safety concerns, in that claimant allowed a cart under her control to collide with a coworker, and used foul language where it could be overheard by customers and other employees. As the employer did not rebut claimant's testimony that the former incident occurred accidentally because claimant did not see the coworker in the path of the cart, the record fails to show that her actions were willful or wantonly negligent. Transcript at 19. With respect to the latter incident, although claimant's use of foul language in the presence of customers likely involved wanton negligence, it is too remote in time from the March 2, 2026 incident to consider the incidents collectively as a pattern of wantonly negligent conduct, as opposed to infrequent occurrences.

Furthermore, claimant's conduct on March 2, 2026 did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct did not create an irreparable breach of trust in the employment relationship, as it did not involve, for example, dishonesty, cheating, theft, self-dealing, or abuse of official position. Nor did claimant's conduct otherwise make a continued employment relationship impossible, as it did not impede any essential aspect of the relationship or threaten its continued existence. The record suggests that the employer had no tolerance for certain safety violations involving potentially dangerous equipment, and that this may have influenced the employer's decision to discharge claimant rather than impose less severe discipline. See Transcript at 8. However, a determination of whether a claimant's conduct made a continuing employment relationship impossible is objective, not subjective, and the employer cannot unilaterally announce a breach of trust if a reasonable employer in the same situation would not. *Callaway v. Employment Dept.*, 225 Or App 650, 202 P3d 196 (2009); see accord *Isayeva v. Employment Dept.*, 266 Or App 806, 340 P3d 82 (2014). As the pallet jack moved only a few inches while claimant failed to

control it and posed no immediate threat to people or property, a reasonable employer in the same situation would not necessarily decide that claimant could not be trusted to follow safety guidelines in the future and that discharge was therefore the only appropriate response. Accordingly, claimant's conduct on March 2, 2026 did not exceed mere poor judgment, and was an isolated instance of poor judgment, which is not 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-335610 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.

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.surveygizmo.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.



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.

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