

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0692

Reversed ~ No Disqualification
Revocada ~ No Descalificación

Este documento incluye información importante que no ha sido traducida al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-378-2077 para obtener servicios de traducción gratuitos.¹

PROCEDURAL HISTORY: On July 6, 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 24, 2026 (decision # L0018512522).² Claimant filed a timely request for hearing. On July 29, 2026, ALJ Laurie-Gardiner conducted a hearing that was interpreted in Spanish, and on July 31, 2026 issued Order No. 26-UI-336352, affirming decision # L0018512522. On August 3, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

ANTECEDENTES PROCESALES: El 6 de julio de 2026, el Departamento de Empleo de Oregon (el Departamento) notificó una decisión administrativa en la que se determinaba que el reclamante fue despedido por mala conducta y que, por consiguiente, fue descalificado para recibir beneficios del seguro de desempleo a partir del 24 de mayo de 2026 (decisión No. L0018512522). El reclamante presentó una solicitud de audiencia dentro del plazo establecido. El 29 de julio de 2026, el juez de derecho administrativo (ALJ) Laurie-Gardiner celebró una audiencia con servicio de interpretación al español y, el 31 de julio de 2026, emitió la Orden No. 26-UI-336352, mediante la cual se confirmaba la

¹ This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-378-2077 to obtain free translation services.

² Decision # L0018512522 stated that claimant was denied benefits from June 7, 2026 to June 5, 2027. However, as decision # L0018512522 found that claimant separated from work on May 30, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 24, 2026 and until he earned four times his weekly benefit amount. See ORS 657.176.

decisión No. L0018512522. El 3 de agosto de 2026, el reclamante presentó una solicitud de revisión ante la Junta de Apelaciones de Empleo (EAB).

WRITTEN ARGUMENT: Claimant did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

ARGUMENTO POR ESCRITO: *El reclamante no declaró haber entregado al empleador una copia de su argumento, tal como lo exige la regla OAR 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contenía información que no formaba parte del expediente de la audiencia y no demostraba que factores o circunstancias ajenos al control razonable del reclamante le hubieran impedido presentar esa información durante la audiencia, conforme a lo requerido por la regla OAR 471-041-0090 (13 de mayo de 2019). La EAB tomó en cuenta únicamente la información admitida como prueba en la audiencia. Véase Estatuto Revisado de Oregón 657.275(2).*

FINDINGS OF FACT: (1) Casa Medera employed claimant at their restaurant as a waiter's assistant from May 15, 2026 through May 30, 2026. Claimant's job duties included bringing chips and salsa to patrons' tables, refilling patrons' water glasses, cleaning tables after patrons left, and other tasks to assist the waitstaff.

(2) At some point prior to May 30, 2026, claimant had taken time during his shift to speak to some of the restaurant's patrons about a charity event he was participating in and gave them his personal phone number. Afterwards, the restaurant manager told claimant not to give out his personal information "because he didn't want what [claimant] was doing to reflect his business in terms of events." Transcript at 29. Claimant understood this to mean that the restriction the manager had expressed related to what type of information claimant gave patrons and not how much time he spent speaking to them.

(3) On May 30, 2026, claimant brought a case of beer to work before his shift and stored it in the kitchen. Before beginning his shift, claimant drank one of the beers, which he believed the employer would find acceptable because the manager frequently bought drinks for staff after the restaurant had closed for the evening.

(4) Later that day, during his shift, claimant noticed that the patrons at one of the tables he had recently cleared were doing readings with a tarot deck. Claimant approached them and asked if they would do a one-card reading for him in exchange for some candy he had brought with him. The patrons "enthusiastically said [they] would love to do that," so claimant joined them at their table. Transcript at 24. Towards the end of the conversation, the patrons invited claimant to visit them at a nearby coffee shop where they worked. After the interaction concluded, claimant returned to his duties.

(5) On May 30, 2026, the employer discharged claimant because he had been interacting with customers instead of performing his duties, and because the manager had felt that claimant was "aggressive" in his responses to the manager's directives. Transcript at 6.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

CONCLUSIONES Y RAZONES: *El reclamante fue despedido, pero no por mala conducta.*

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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b).

The employer discharged claimant because he had been interacting with customers instead of performing his duties, and because the manager had felt that claimant was “aggressive” in his responses to the manager’s directives. As a preliminary matter, the order under review determined that claimant had been discharged both because of his interaction with the patrons on May 30, 2026, and because he had consumed a beer prior to the start of his shift that day. Order No. 26-UI-336352 at 4. However, the record does not show by a preponderance of the evidence that claimant’s pre-shift consumption of the beer was a proximate cause of the discharge.³

At hearing, the restaurant manager testified first that he discharged claimant because claimant was “doing [things] incorrectly,” which he described as claimant “sit[ting] down to chat with the customers”; and because claimant’s “replies [to the manager’s directives] were aggressive and his behavior was aggressive.” Transcript at 6. The manager later testified that the final incidents that led him to discharge claimant were when claimant “sat and chatted with . . . the customer for 30 minutes. And he . . . brought to work . . . beer and he drank one at the job.” Transcript at 7–8.⁴ Claimant, by contrast, testified that he had only consumed a single beer *before* his shift; but that, moreover, the manager had not mentioned anything about claimant’s having done so when he discharged claimant.⁵ Transcript at 28.

³ See e.g. *Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

⁴ Later still, the manager testified that claimant “hid and drank one beer while he was working.” Transcript at 9.

⁵ Because the evidence as to *when* claimant consumed the beer is equally balanced, the employer has not met their burden to show that claimant consumed alcohol while working, and the facts on that point have been found in accordance with claimant’s account.

In addition to the above testimony, it should be noted that, whether claimant consumed a beer before or prior to his shift, the employer appears to have nevertheless permitted him to finish that shift, rather than sending him home or immediately discharging him. It stands to reason that if the employer had so objected to claimant having consumed a beer prior to or during his shift that they had decided to discharge him for it, they would not have permitted him to continue working after learning of that fact. Given this, as well as the disputed testimony on this point, the record does not show, by a preponderance of the evidence, that claimant's consumption of a beer on May 30, 2026 was a proximate cause of the employer's decision to discharge him.

Regarding the assertion that claimant had been acting "aggressively," the employer has not met their burden to show that claimant violated their expectations willfully or with wanton negligence. At hearing, the manager testified that claimant had been acting aggressively by coming "really close" to the manager and giving "inappropriate replies" in response to the manager's attempts to correct claimant's actions; and that claimant did not use profanity in these interactions. Transcript at 7. The manager failed to provide a clearer explanation of what claimant actually did in these incidents, and neither did the manager explain when these incidents occurred. Because an objective accounting of claimant's conduct during these incidents cannot be discerned from the record, the employer has not met their burden to show that claimant's conduct in these incidents violated the employer's expectations willfully or with wanton negligence.

Regarding claimant's encounter with the tarot-card reading patrons that day, the employer has also not met their burden of proof to show that this was a willful or wantonly negligent violation of their standards of behavior. Here, too, the parties' accounts differed significantly. At hearing, the manager testified that he had previously warned claimant "several times" about fraternizing with patrons when claimant was supposed to be working, although he gave no specifics as to when these warnings were given. Transcript at 8. By contrast, claimant asserted that the manager had only spoken to him about such concerns on one prior occasion, when claimant had been speaking to some patrons about a charity event he was involved in; and that, based on the discussion, claimant understood this to mean that the restriction the manager had expressed related to what type of information claimant gave patrons, rather than how much time he spent speaking to them. Transcript at 29. On this point as well, the record is no more than equally balanced. As such, because the employer bears the burden of proof, the facts on this point have been found in accordance with claimant's account.

Given the above, claimant's understanding of what the employer had explained to him on the prior occasion, and the lack of a clear account of what the manager had actually said to claimant in that explanation, the record does not show, by a preponderance of the evidence, that claimant actually knew or had reason to know that the employer disapproved of his interaction with the tarot-card reading patrons on May 30, 2026. As such, even if claimant's conduct during that incident violated the employer's expectations, he did not violate those expectations willfully or with wanton negligence.

Finally, even if claimant knew or had reason to know that his interaction with the patrons on May 30, 2026 violated the employer's expectations, his conduct during that incident would have been no more than an isolated instance of poor judgment. Aside from the May 30, 2026 interaction, the record shows only the one prior instance of claimant having interacted with patrons in a way the employer disapproved of, as discussed above; and it does not show that claimant knew or had reason to know on *that* occasion that the employer would disapprove of how he interacted with them until after he had

already done so. Additionally, the record does not show that claimant knew or had reason to know that the employer expected him to refrain from consuming a beer prior to starting his shift on May 30, 2026, as the employer did not show that they had ever told claimant what their expectations regarding on-premises alcohol consumption were prior to that point. The record does not show that claimant had previously engaged in any other conduct that willfully or with wanton negligence violated the employer's expectations. As such, even if his conduct during the May 30, 2026 interaction with patrons *was* willful or wantonly negligent, it was isolated.

Claimant's conduct on May 30, 2026 also did not exceed mere poor judgment. The conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's conduct during his interaction with the patrons that day 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 was not likely to reoccur, did not impede any essential aspect of the relationship, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. As such, claimant's conduct on May 30, 2026 was, at worst, an isolated instance of poor judgment, which is not misconduct.

For the above reasons, claimant was discharged, but not for misconduct, and is therefore not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-336352 is set aside, as outlined above.

DECISIÓN: *Se revoca la Orden N.º 26-UI-336352, como se explicó antes en esta decisión.*

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

DATE of Service: September 22, 2026

FECHA de Notificación: 22 de septiembre de 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.

NOTA: *Esta decisión revoca la orden del juez de derecho administrativo (ALJ) que denegaba los beneficios al reclamante. Tenga en cuenta que, en la mayoría de los casos, el Departamento tarda aproximadamente una semana en completar el pago de los beneficios adeudados.*

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.surveymoz.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.

NOTA: Puede apelar esta decisión presentando una Petición de Revisión Judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) **dentro de los 30 días siguientes a la fecha de entrega de esta decisión indicada arriba.** Vea ORS 657.282. Para obtener formularios e información, visite <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> y elija el formulario para “Junta de Apelaciones Laborales”. En este sitio web, hay información disponible en español. Puede solicitar un intérprete para la Corte en <https://web.courts.oregon.gov/osca/clas/CLASRequestFormRedirect.html> También puede comunicarse con la Corte de Apelaciones por teléfono al (503) 986-5555, por fax al (503) 986-5560 o por correo a 1163 State Street, Salem, Oregon 97301.

Por favor, ayúdenos a mejorar nuestro servicio completando una encuesta de servicio al cliente. Para completar la encuesta en línea, vaya a <https://www.surveymoz.com/s3/5552642/EAB-Customer-Service-Survey>. Si no puede completar la encuesta en línea y desea obtener una copia impresa de la encuesta, comuníquese con nuestra oficina.



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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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