

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

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0698

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 28, 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 # L0017331403). The employer filed a timely request for hearing. On June 3, 2026, ALJ Hall conducted a hearing at which claimant failed to appear, and on June 11, 2026 issued Order No. 26-UI-332607, reversing decision # L0017331403 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective January 18, 2026. On June 24, 2026, claimant filed an application for review of Order No. 26-UI-332607 that was treated as a request to reopen the June 3, 2026 hearing.¹ ALJ Kangas considered the request, and on August 6, 2026 issued Order No. 26-UI-336885, denying the request and leaving Order No. 26-UI-332607 undisturbed. On August 26, 2026, Order No. 26-UI-336885 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). This matter comes before EAB based upon claimant's June 24, 2026 application for review of Order No. 26-UI-332607, which OAH returned to EAB pursuant to OAR 471-040-0040(6) to review the merits of the substantive decision.

FINDINGS OF FACT: (1) Lowe's Home Improvement Centers, LLC, employed claimant as a sales associate until January 19, 2026. Claimant had worked for the employer for approximately four to five years.

¹ OAR 471-040-0040(6) (February 10, 2012) provides: "The [Office of Administrative Hearings (OAH)] will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision."

(2) The employer expected their sales associates to assist any customers requesting assistance on the sales floor. Claimant was provided training on this expectation at hire, and it was frequently discussed with him for disciplinary reasons during the final year of his employment.

(3) On approximately July 18, 2025, claimant was summoned by radio to assist a customer in the department where he was assigned to work, and he initially failed to respond. Claimant eventually stated over the radio that he did not know anything about the product the customer was interested in and would not help the customer, which the customer heard. On August 3, 2025, the employer issued claimant a final written warning regarding this incident. Claimant had previously been disciplined for at least one other recent alleged policy violation.

(4) After the August 3, 2025 warning, the store's assistant manager spoke with claimant approximately 10 to 15 times about the need to provide assistance to customers on the sales floor, after observing claimant refusing to help customers on some occasions.

(5) On January 6, 2026, a customer approached claimant and asked for assistance locating a plumbing product. Claimant responded that he did not know anything about the product and declined to help. The assistant manager was conducting an observation of claimant's interactions with customers, and assisted the customer himself after claimant walked away. Before leaving the store, the customer lodged a complaint that he was "very upset that he was treated that way" by claimant. Audio Record at 19:30. When questioned about his actions, claimant told the assistant manager that his shift had been scheduled to end in ten minutes, and he therefore had not wanted to start helping a customer at that time.

(6) On January 19, 2026, the employer discharged claimant for his actions on January 6, 2026.

CONCLUSIONS AND REASONS: Claimant was discharged 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 declining to help a customer on January 6, 2026. The employer reasonably expected their sales associates to help customers on the sales floor when assistance was requested, and claimant should have understood this expectation through having undergone training. Claimant admitted to the assistant manager that he declined to help the customer because it was close to the end of his shift, which suggests that claimant acted with indifference to the consequences of his actions and disregard of the employer's interest, knowing that his actions would probably result in a violation of the employer's expectations. Therefore, claimant acted with at least wanton negligence.

Claimant's conduct on January 6 2026 cannot be excused as an isolated instance of poor judgment. The record shows that claimant was warned regarding a similar incident that occurred in July 2025, where he refused to help a customer by claiming he did not know about the product at issue. Additionally, the assistant manager testified that between that incident and the January 6, 2026 incident, he spoke with claimant approximately 10 to 15 times about needing to assist customers, as he observed that on some days claimant consistently complied with the employer's expectation, but on others "he didn't want to help anybody; he just wouldn't do it." Audio Record at 27:50. The record therefore shows that claimant's conduct on January 6, 2026 was not a single or infrequent occurrence, but was instead a repeated and part of a pattern of willful or wantonly negligent conduct. As such, it cannot be excused as an isolated instance of poor judgment. Accordingly, the employer has shown that they discharged claimant for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving benefits effective January 18, 2026.

DECISION: Order No. 26-UI-332607 is affirmed.

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

DATE of Service: September 22, 2026

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 دستور العمل 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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