

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0702

Reversed & Remanded

PROCEDURAL HISTORY: On June 30, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective March 8, 2026 (decision # L0018440785).¹ Claimant filed a timely request for hearing. On July 17, 2026, ALJ Murdock conducted a hearing, and on July 24, 2026 issued Order No. 26-UI-335900, reversing decision # L0018440785 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation. On August 7, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision.

FINDINGS OF FACT: (1) Landmark Ford, Inc. employed claimant as a clerical assistant at their car dealership from November 25, 2024 through March 10, 2026.

(2) The employer expected their employees to report for work on time. Claimant understood this expectation.

(3) Claimant was late for work on several occasions during her employment. On December 16, 2025, the employer had a "final. . . corrective conversation" with claimant regarding her punctuality. Transcript at 11. Claimant continued to arrive at work late after this warning.

(4) On February 23, 2026, while claimant was working, she stopped by a reception desk to chat with the receptionist, who was a close friend, for approximately 15 minutes. This was reported to the employer's

¹ Decision # L0018440785 stated that claimant was denied benefits from April 19, 2026 to April 17, 2027. However, as decision # L0018440785 asserted that the work separation occurred on March 10, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 8, 2026, and until she earned four times her weekly benefit amount. See ORS 657.176.

controller, who later warned claimant and the receptionist that this was an inappropriate use of work time and created an unprofessional look for the reception desk.

(5) On March 5, 2026, claimant's shift ended at 6:30 p.m. At that time, claimant went to the reception desk and chatted with the receptionist, who was still working, for approximately 30 minutes. This was reported to the controller the following day, who confirmed the report through reviewing surveillance footage on March 10, 2026.

(6) On March 10, 2026, claimant was approximately ten minutes late for work. That afternoon, the employer discharged claimant for having chatted with the receptionist on March 5, 2026, which the employer considered to have violated the warning that followed the February 23, 2026 incident.

CONCLUSIONS AND REASONS: Order No. 26-UI-335900 is set aside and the matter remanded for further development of the record.

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 having chatted with an on-duty receptionist for approximately 30 minutes on March 5, 2026. Although claimant was also late for work on March 10, 2026, the day she was discharged, the record shows that claimant would not have been discharged for that instance of tardiness alone, and would have been discharged for the March 5, 2026 incident even if she had not been tardy that day.² The March 5, 2026 incident is therefore the initial focus of the discharge analysis.

² 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).

Following a February 23, 2026 incident, claimant was warned against socializing at the reception desk. Claimant testified that she understood from the warning that the employer prohibited this conduct because “it could be disruptive or unprofessional looking if I was standing there talking to [the receptionist],” and because it was not an appropriate use of work time while on the clock. Transcript at 20. Claimant did not dispute that on March 5, 2026, she chatted at the reception desk for approximately 30 minutes while customers were “coming in and out,” but asserted that it did not interfere with the receptionist’s duties; that it occurred after the end of claimant’s shift; and that she believed the employer regularly tolerated similar conduct from other employees. Transcript at 20-21. However, even though claimant was not being paid for the time spent chatting, she knew that the receptionist was being paid for that time; claimant had been told that the employer viewed socializing at the reception area as presenting an unprofessional appearance to the customers who passed by; and claimant should have known that even if the employer sometimes tolerated similar behavior from other employees in other circumstances, they were unlikely to tolerate this specific behavior since the employer warned her and the receptionist about it during the previous week. Therefore, claimant was acting with indifference to the consequences of her actions, while she knew or should have known that her actions would probably result in a violation of the reasonable expectation communicated to her in the February 2026 warning. As such, claimant acted with wanton negligence.

The order under review concluded, “To whatever extent that [claimant] knew or should have known to refrain from conversing with co-workers or under what circumstances she could not talk to co-workers, her conduct [on March 5, 2026] was an isolated instance of poor judgement.” Order No. 26-UI-335900 at 3. Further development of the record is needed to determine whether the March 5, 2026 incident was an isolated instance of poor judgment.

With respect to the February 23, 2026 incident, the record fails to show that, prior to that time, claimant had been informed of an employer policy that prohibited her from socializing with the receptionist under the circumstances that occurred that day. Therefore, the employer did not establish that claimant knew or should have known that her conduct on that occasion would probably result in a violation of an employer policy. However, the record shows that claimant was informed of the employer’s expectations regarding punctuality, including in a final warning on December 16, 2025, and that she continued to arrive at work late after that date. For example, on March 10, 2026, claimant was approximately ten minutes late for work, and at hearing could not recall specifically why she had been late but surmised she “might have just been running out the door a couple minutes late,” and suggested that this was also her reason for having been tardy on some other prior occasions. Transcript at 22-23. This testimony suggests that rather than having been late for unforeseeable or unavoidable reasons, claimant’s tardiness may have resulted from indifference to the consequences of her actions or disregard of the employer’s interest, such that her actions of improperly chatting with the receptionist on March 5, 2026 may have been part of a pattern of other wantonly negligent conduct rather than a single or infrequent occurrence.

On remand, inquiry should be made as to the specific occasions on which claimant was tardy during the final few months of her employment and the reasons for her tardiness on each occasion, and whether those instances of tardiness constituted a pattern of willful or wantonly negligent conduct, such that claimant’s actions on March 5, 2026 cannot be excused as an isolated instance of poor judgment.

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 decide whether claimant was discharged for misconduct, Order No. 26-UI-335900 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-335900 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 24, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-335900 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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