

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0725

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 15, 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 May 17, 2026 (decision # L0018764485). Claimant filed a timely request for hearing. On July 30, 2026, ALJ Andersen conducted a hearing, and on August 6, 2026 issued Order No. 26-UI-336853, affirming decision # L0018764485. On August 12, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Desert Springs Bottled Water Co. employed claimant from March 20, 2024 through May 18, 2026. Until April 28, 2026, claimant worked as a water delivery driver. After that date, claimant worked in the employer's warehouse and as a delivery assistant, as his license to drive commercial vehicles had expired and could not be renewed for medical reasons.

(2) The employer expected their employees to report for work on time and to notify them prior to the scheduled start of their shift if they would be late or absent. The employer also expected their delivery drivers to complete their assigned routes each day unless granted permission to delay a specific delivery. Claimant understood these policies.

(3) On Friday, February 13, 2026, claimant's assigned route included deliveries at Kadlec Regional Medical Center. A driver trainee was scheduled to accompany claimant on his route that day, but was significantly late in arriving to work, delaying their route. Claimant texted the employer that, due to this delay, he intended to make the Kadlec delivery on Monday, February 16, 2026. On either February 13 or 14, 2026, the employer's owner called claimant and told him that delaying Kadlec's delivery until Monday was not acceptable. Claimant believed that one of the medical center's buildings, a laboratory, was closed on the weekends, and that since he could not deliver to that building until Monday, it would be most efficient to make the entire delivery on Monday. Nevertheless, during the phone call claimant

agreed to make the delivery on February 14, 2026, and delivered to all the medical center buildings except for the laboratory that day. Claimant made the laboratory delivery on February 16, 2026.

(4) On February 16, 2026, the employer issued claimant a written warning that stated, “Did not follow order to do Kadlec on Friday and did not call on [weekend] (Friday, Saturday or Sunday) to let us know [that] he did do route.” Exhibit 1 at 8. The employer imposed this discipline based on their belief that claimant had made the entire medical center delivery on Monday, while claimant believed that he was being disciplined for failing to make the delivery on Friday as a result of the trainee’s tardiness.

(5) Following the February 16, 2026 warning, claimant was late for work on several occasions but timely notified the employer that he would be late, and usually provided a reason related to his health. The employer excused these instances of tardiness.

(6) On May 17, 2026, claimant knew that he was scheduled to work the following day at 7:00 a.m. That night, he was out with family members and drinking heavily. Claimant did not arrive home until approximately 4:00 a.m. on May 18, 2026, and had passed out from intoxication while being driven home. Claimant slept until approximately 3:00 p.m. At 3:12 p.m., claimant texted the employer, “Hey bro I totally did a no call no show today[.] I didn’t mean to, we celebrated Mother’s Day yesterday so the whole family went out. . . and I wasn’t expecting to get shitfaced[.] [W]e got home really late and I got up not [too] long ago[.]” Exhibit 1 at 6. Later that day, the employer discharged claimant for being absent without notice.

CONCLUSIONS AND REASONS: Claimant was discharged, but 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).

Claimant was discharged because he failed to report for work and did not notify the employer that he would be absent on May 18, 2026. The employer reasonably expected that their employees would report

for work as scheduled and provide timely notice if they would be late or absent, and claimant understood this expectation. Claimant did not report for work or provide notice that he would be absent because he was sleeping most of the day. Claimant asserted at hearing that he thought he would awaken in time for his shift based on having timely reported to work after only a few hours of sleep due to playing video games on previous occasions, thereby suggesting that the incident was attributable to ordinary negligence. Transcript at 23-24. However, unlike those prior occasions, on the night preceding his May 18, 2026 shift claimant was away from home until three hours prior to the start of his shift, drinking to the point of intoxication throughout the night. Claimant testified that due to his consumption of alcohol he had passed out in the car when he was being brought home, and was too intoxicated upon arrival to consider leaving a message for the employer that he might be late or absent, or to take other precautions to ensure compliance with the attendance policy. Transcript at 23-26. Under these circumstances, claimant demonstrated indifference to the consequences of his actions in the hours prior to his May 18, 2026 shift, knowing that they would probably result in a violation of the employer's reasonable attendance expectations by causing him to sleep through the start of his shift. Claimant therefore acted with wanton negligence.

However, isolated instances of poor judgment are not misconduct. The order under review concluded that claimant's conduct on May 18, 2026 was not isolated because he had "knowingly failed to notify a manager of his absence on February 14, 2026" (apparently referring to the delayed Kadlec delivery that had originally been scheduled for the previous day).¹ Order No. 26-UI-336853 at 4. The record does not support this conclusion.

The parties gave conflicting accounts of the events leading to the February 16, 2026 warning. Both parties agreed that as part of his usual route, claimant was expected to deliver to Kadlec's buildings on February 13, 2026. They also agreed that a trainee who was supposed to accompany claimant on the route failed to appear at the 3:00 a.m. scheduled start time, and that at 3:55 a.m., claimant texted his supervisor to explain the situation and stated, "I'm going to go tomorrow morning and do the main hospital. . . sorry if it wasn't okay for me to decide." Transcript at 32-33. Claimant testified that on either February 13 or 14, 2026, the owner spoke with him by phone and told him that the Kadlec delivery could not wait until Monday because she had already received a complaint about Kadlec being out of water; and that in response, claimant explained why delivering before Monday was impractical due to one of the buildings being closed on the weekend, but agreed to make the delivery on Saturday, February 14, 2026. Transcript at 43. Claimant testified that he made the Kadlec delivery on February 14, 2026, except for the part meant for the closed laboratory building, which he delivered on February 16, 2026. Transcript at 33.

In contrast, the employer's witness testified that after receiving claimant's February 13, 2026 text, they expected that he would make the delivery the following day, but that he did not make any delivery to Kadlec on February 13, 14, or 15, 2026. Transcript at 8. The employer also submitted two delivery logs, for "Kadlec-Ultrasound" and "Kadlec-Lab," with delivery date entries of "2-16," which the employer asserted was evidence that claimant had made all the Kadlec deliveries on February 16, 2026. Exhibit 1 at 9; Transcript at 9. In rebuttal, claimant testified that Kadlec had multiple accounts and delivery logs

¹ It is unclear why that portion of the order characterized the February 2026 incident as an attendance policy violation, as the employer's warning characterized it as a matter of "Defective Work" in failing to timely make a specific delivery rather than an absence from a scheduled shift, and this also appeared to be the employer's view of the incident at hearing. Exhibit 1 at 8.

reflecting their multiple buildings and departments, and that the delivery dates on the logs were sometimes entered later by clerical staff and therefore inaccurate. Transcript at 55-56.

On this record, the evidence showing that claimant made all the Kadlec deliveries on February 16, 2026 is no more than equally balanced with the evidence showing that he made all the deliveries except for the closed laboratory building on February 14, 2026. As the employer bears the burden of proof by a preponderance of the evidence and did not meet that burden, this fact has been found in accordance with claimant's account. It is unclear whether the employer would have disciplined claimant if they had an accurate understanding of when he made the Kadlec deliveries. To the extent the employer considered claimant's failure to make the deliveries as originally scheduled on February 13, 2026 to violate their expectations, the failure was precipitated by the trainee's failure to report for work on time. Claimant promptly notified the employer of his intent to delay the delivery to Monday for that reason, and, when claimant was directed by the owner to instead make the delivery on Saturday, he agreed. Claimant's failure to make the delivery as originally scheduled was therefore not the result of indifference to the consequences of his actions, or of a disregard of the employer's interest, and was therefore not wantonly negligent.

Similarly, claimant's failure to make some of the Kadlec deliveries on Saturday was not willful or wantonly negligent, as it was due to one of their buildings being closed, which was a circumstance beyond his control. Therefore, the employer has not met their burden to show that claimant willfully or with wanton negligence violated a reasonable expectation regarding the Kadlec delivery and, in turn, that his actions on May 18, 2026 were not a single or infrequent occurrence. Accordingly, claimant's May 18, 2026 absence without notice was isolated. Furthermore, it 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, threaten its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty. Claimant's actions on May 18, 2026 therefore constituted an isolated instance of poor judgement, which is not misconduct.

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

DECISION: Order No. 26-UI-336853 is set aside, as outlined above.

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

DATE of Service: September 29, 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.

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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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