

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

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0727

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 16, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from unemployment insurance benefits from May 24, 2026 to May 22, 2027 (decision # L0018774454). Claimant filed a timely request for hearing. On August 4, 2026, ALJ Franco conducted a hearing, and on August 11, 2026, issued Order No. 26-UI-337127, modifying decision # L0018774454 by concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving benefits effective May 24, 2026. On August 13, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Securitas Security Services USA, Inc., employed claimant as a security officer from May 15, 2025 until May 29, 2026.

(2) The employer expected employees to be present for their scheduled work shifts and prohibited excessive absenteeism. Claimant understood these expectations.

(3) At the time the employer hired claimant, and throughout his employment, claimant did not own a car. However, when he was hired, claimant made known to the employer that he had reliable transportation to get to work through either taking the bus or getting rides from coworkers.

(4) From the date he was hired until in or around April 2026, claimant was able to find transportation to work for all his scheduled shifts by either taking the bus or getting rides from coworkers. During this period, claimant had sufficient money to pay for bus fare or to give some money to coworkers who gave him rides to cover some of their costs associated with giving him rides to work.

(5) Beginning in or around early April 2026, claimant began experiencing difficulty finding transportation to work. At that time, claimant testified he had to devote all of his income to paying his rent, his utilities, and to pay for food, and as a result, he did not have any money to buy bus fare to transport himself to work. At the same time, claimant found that he could no longer get rides from

coworkers. Over time, the coworkers had become uncomfortable giving rides to claimant, and in response to this, although the employer did not formally prohibit coworkers from providing claimant with rides, in or around April 2026, one of claimant's supervisors informed claimant that it was generally claimant's responsibility to get to and from work on his own.

(6) Claimant also could not walk to work because he lived more than three hours away from the workplace by walking, and had a disability that caused him extreme pain if he was on his feet for more than an hour. Claimant checked whether he could get a free bus pass from a local charity service, but he was ineligible because of his income. Claimant could not obtain a ride from family or friends because he had moved to Oregon from Colorado, had no family in the area, and his only one friend in the area did not have a car in working order. Claimant also did not have a bicycle or the means to buy one, and did not know anyone from whom he could borrow a bicycle.

(7) In early April 2026, and in early and mid-May 2026, Claimant was absent from numerous work shifts due to his transportation limitations. Because of these absences, the employer gave claimant a verbal warning, a first written warning, and a final written warning.

(8) On May 22, 23, and 24, 2026, claimant was scheduled to work. Claimant called the employer before the May 22, 2026 shift and told them that he was unable to go to work that day or his next two shifts, on May 23 and 24, 2026, because he did not have transportation. The employer suspended claimant for the May 22, 2026 absence pending an investigation.

(9) On May 29, 2026, the employer discharged claimant. On that date, the employer's human resources manager called claimant and informed him that the employer was terminating his employment due to excessive absenteeism.

CONCLUSIONS AND REASONS: The employer discharged claimant, 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).

The order under review concluded that claimant was discharged for misconduct. Order No. 26-UI-337127 at 4-5. The record does not support this conclusion.

The employer did not meet their burden to prove that claimant was discharged for misconduct because they failed to prove that claimant violated their expectations willfully or with wanton negligence. The employer reasonably expected employees to be present for their scheduled work shifts. Claimant

understood this expectation but was unable to comply with it because he lacked transportation to get to work.

The employer discharged claimant because of his absences on May 22, 23, and 24, 2026. As these were the policy violations without which claimant would not have been discharged when he was, these absences were the proximate cause of the discharge and therefore the focus of the misconduct analysis. *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).

Although claimant violated the employer's attendance expectation on May 22, 23, and 24, 2026, he did not do so willfully or with wanton negligence. On those dates, claimant was absent from work because he did not have transportation. No transportation was available to claimant in that he did not have a car or a bicycle, he could not afford bus fare, rides from coworkers were no longer available to him, walking to work was not feasible due to his disability and distance from work, he was not eligible for a free bus pass from a local charity service, and he had no family in the area and only one friend, who could not give claimant a ride.

In light of these facts, the record fails to show that claimant's attendance violations during the final incident were willful, because he did not intend to be absent on those dates but simply had no way to get to work. Furthermore, the record fails to show that claimant's attendance violations during the final incident were wantonly negligent, because circumstances he did not control prevented him from having transportation to work. Therefore, it cannot be said that claimant acted with indifference to the consequences of his actions, as must be proven for a policy violation to be wantonly negligent. Because claimant's policy violations during the final incident were not willful or wantonly negligent, they did not amount to misconduct connected with work under ORS 657.176(2)(a).

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

DECISION: Order No. 26-UI-337127 is set aside, as outlined above.

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

DATE of Service: September 30, 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 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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.