

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0742

Reversed
No Disqualification
No Overpayment

PROCEDURAL HISTORY: On July 1, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective January 18, 2026, and that claimant was overpaid \$3,876 in benefits that she was liable to repay to the Department (decision # L0018543065). Claimant filed a timely request for hearing. On July 20, 2026 and continuing on August 10, 2026, ALJ Goodrich conducted a hearing, and on August 14, 2026 issued Order No. 26-UI-337490, affirming decision # L0018543065.¹ On August 17, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument because she did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) People's Food Cooperative employed claimant at their grocery store from July 29, 2025 through January 22, 2026.

(2) On December 10, 2025, the employer suspended claimant from work while they investigated a complaint from a coworker that claimant had made a racially offensive comment to them about a different coworker while off of work and outside the workplace. Claimant told the employer that she did not recall having made the statement, the investigation concluded that there was insufficient evidence to corroborate the complaint, and claimant was allowed to return to work after approximately two weeks. On December 27, 2025, claimant filed a grievance with the employer regarding her suspension and seeking back pay, which was ultimately denied on January 16, 2026.

¹ Neither the Department nor the employer appeared for the August 10, 2026 hearing.

(3) On January 13, 2026, the employer scheduled a meeting to present claimant with a performance improvement plan (PIP) based on several points of dissatisfaction with her work and behavior. Claimant declined to attend the meeting, so the PIP was emailed to her, and claimant replied by email that she thought the timing of the PIP was inappropriate because her grievance was still pending. One of the expectations set forth in the PIP was, essentially, that claimant's communication with others be appropriate and unoffensive.

(4) On January 17, 2026, claimant approached a coworker who was on the committee that had denied her grievance the previous day. Claimant considered the coworker a friend and wanted to speak with him about the denial of her grievance. Claimant initiated the conversation by showing the coworker a newspaper article referencing the CIA, and claimant stated something to the effect of, "This reminds me of you." August 10, 2026 Transcript at 10. The coworker reacted "very angrily," telling claimant that this was inappropriate and creating a hostile work environment. August 10, 2026 Transcript at 12. Claimant thought that she and the coworker were both "into like that kind of stuff" based on previous discussions and did not think that the coworker would view the article or her comment as inappropriate or offensive. August 10, 2026 Transcript at 10. Later in the conversation, claimant said, "I am ready to talk any time, babe." August 10, 2026 Transcript at 11. Claimant added the word "babe" by accident, as she had been surprised by the coworker's angry reaction to the conversation.

(5) On January 19, 2026, the employer suspended claimant pending investigation of her January 17, 2026 interaction, and on January 22, 2026 discharged her for her conduct during that interaction.

(6) On January 23, 2026, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid, with a weekly benefit amount of \$204. Claimant was thereafter paid \$3,876 in benefits on the claim. The Department subsequently concluded in decision # L0018543065 that claimant had been overpaid those benefits based solely on the disqualification resulting from the January 22, 2026 work separation.

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

Discharge. 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 employer discharged claimant because of her January 17, 2026 interaction with a coworker. Although the employer had been dissatisfied with several aspects of claimant's performance and behavior in the preceding weeks, the January 17, 2026 incident was the proximate cause of the decision

to discharge her, and is therefore the initial focus of the discharge analysis.² The employer reasonably expected that their employees would not make inappropriate or offensive comments to coworkers, and claimant was reminded of this expectation in the January 13, 2026 PIP. The order under review concluded that claimant violated this expectation with wanton negligence during the January 17, 2026 interaction because she knew or should have known that the coworker would view her actions and comments as inappropriate. Order No. 26-UI-337490 at 6-7. The record does not support this conclusion.

On January 17, 2026, claimant wanted to speak with the coworker about the denial of her grievance and thought, based on prior interactions, that the CIA article would be of common interest and therefore a good way of getting his attention. The employer's representative at hearing explained that the coworker had interpreted claimant's presentation of the article as impugning the integrity of the grievance committee, and that claimant making the "I am ready to talk any time, babe" statement was an "insubordinate" response to the coworker's feedback that the CIA article and comment were inappropriate. July 20, 2026 Audio Record at 1:14:40. Claimant acknowledged at hearing that in retrospect this had been an "awkward" way to approach the conversation, but that she had thought the coworker "was the guy that [she could] talk to about that weird stuff at work," referring to the topic of the CIA article. August 10, 2026 Transcript at 11-12. Claimant testified that she "could tell by his reaction that it was completely not welcome" and that he got "very angry." August 10, 2026 Transcript at 11. Claimant further testified that the two then briefly discussed when it would be appropriate to talk about the grievance, and that she had made the "I am ready to talk any time" statement "to kind of just smooth the situation over," and "might have called him 'babe' by accident." August 10, 2026 Transcript at 12-13.

The employer did not rebut claimant's testimony that she said the word 'babe' by accident after being surprised by the co-worker's angry reaction, and has therefore not shown by a preponderance of the evidence that claimant acted consciously with respect to saying that word. The January 13, 2026 PIP cited several examples of claimant having acted or communicated with coworkers in ways that her coworkers viewed as inappropriate or offensive, apparently without claimant having anticipated those reactions. See Exhibit 1 at 42-45. This evidence, along with the descriptions at hearing of the January 17, 2026 interaction, suggests that claimant generally had difficulty gauging how others would view the appropriateness of things she said or did.

The record does not show that the CIA newspaper article or claimant's comment associating the coworker with it were objectively offensive, and claimant explained, with adequate reason, why she felt the article and comment would be well-received. The record also does not show that claimant intended the "I am ready to talk any time" statement to be "insubordinate," as the coworker viewed it, but instead meant it as an invitation to discuss the grievance later if he was willing to do so, and as an end to the conversation that had inadvertently angered him. The record therefore shows that, with respect to these conscious actions and statements, claimant did not act with indifference to the consequences of her actions when she knew or should have known that her actions would probably result in a violation of the

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).

employer's expectations. Although claimant had been warned days earlier regarding the appropriateness of her communications with others, she did not have reason to know that these specific actions and statements would be viewed as inappropriate by her coworker or the employer, particularly in light of her general difficulty discerning appropriateness when communicating with coworkers. Therefore, the employer has not met their burden of showing that claimant acted willfully or with wanton negligence during the January 17, 2026 interaction that was the proximate cause of her discharge. Accordingly, claimant's discharge was not for 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.

Overpayment. A claimant who was overpaid benefits because of an error not caused by the claimant's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is later reversed by a decision finding the individual is not eligible for the benefits, must have the amount deducted from future benefits otherwise payable to them. An overpayment may only be deducted from any future benefits the claimant is eligible to receive within the five years after the decision concluding there was an overpayment becomes final. ORS 657.315(1)(a).

The Department asserted that claimant was overpaid \$3,876 in benefits based solely on the disqualification resulting from the January 22, 2026 work separation. However, as explained above, EAB's decision reverses that disqualification. Accordingly, claimant was entitled to the \$3,876 in benefits paid following the work separation and was therefore not overpaid those benefits.

DECISION: Order No. 26-UI-337490 is set aside, as outlined above.

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

DATE of Service: October 7, 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

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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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