

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0753

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0017452381). The employer filed a timely request for hearing. On July 9, 2026, ALJ Bender conducted a hearing, and on July 10, 2026 issued Order No. 26-UI-334741, affirming decision # L0017452381. On July 30, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Providence Health & Services Oregon employed claimant as an emergency room technician and unit clerk from November 22, 2021 through March 18, 2026.

(2) The employer's code of conduct included a policy which stated that employees' expected conduct was to include, in relevant part, "[t]reating others with respect and kindness, speaking up if bullying is witnessed or experienced, and reporting any bullying incidents to a core leader." Exhibit 1 at 4. The employer provided claimant with a copy of the code of conduct when she was hired.

(3) In September 2025, claimant's manager became concerned about the behavior of claimant and other employees working on the department's night shift, and temporarily moved the entire team to work on the day shift for a period of time as a result. The employer never told claimant what the specific concerns were that led to this action.

(4) On March 10, 2026, claimant's manager called claimant into a meeting to discuss claimant's annual evaluation. Claimant requested that another person, such as an assistant manager, be present for the meeting because claimant and her manager had a difficult working relationship. Claimant's manager denied claimant's request and proceeded with the evaluation. Instead of discussing claimant's individual performance, however, the manager began to ask claimant a series of broad questions about the unit as a whole. For instance, the manager asked claimant what she would improve about the department. Claimant answered that she would not improve anything about it, as she had been happy with recent

changes. The manager asked claimant approximately five such questions. Each time, claimant gave short answers lacking in detail, as claimant felt that she was not able to offer any more useful information, and also did not want to upset the manager. Nevertheless, these short answers caused the manager to become increasingly upset at claimant, leading the manager to offer responses such as, “That’s all you have?” and “You’ve got to be kidding me.” Audio Record at 34:00. In response to the manager’s escalation, claimant became uncomfortable, and excused herself from the meeting, because she was concerned that she would say something inappropriate to the manager if she did not remove herself from the situation.

(5) After the meeting, claimant went to speak to her charge nurse, and told her that the evaluation had not gone well. Claimant also asked the charge nurse if she could leave her shift early because she was upset and therefore felt that she could not provide appropriate patient care. Shortly thereafter, claimant left her shift, about 30 minutes before it was scheduled to end.

(6) It was subsequently reported to the employer that claimant had used foul language towards the manager during the March 10, 2026 meeting. Based on this report, the employer determined that claimant had violated the employer’s policy requiring her to treat others “with respect and kindness.” The employer therefore discharged claimant on March 18, 2026.

(7) Other than the alleged conduct during the March 10, 2026 meeting and the circumstances surrounding the September 2025 shift rescheduling, no disciplinary concerns had ever been raised regarding claimant’s conduct.

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).

The employer discharged claimant based on their belief that claimant had violated their policy requiring her to treat others with “respect and kindness” during her annual evaluation meeting with her manager

on March 10, 2026. The facts regarding what happened in that meeting, however, as well as other prior circumstances, are in dispute. At hearing, the employer's witness testified that during the meeting, claimant had at one point responded to the manager's request for more elaboration by saying, "This is stupid. Do you want me to write a novel to answer your fucking questions? I have nothing for you." Audio Record at 13:35. Claimant rebutted this assertion, testifying that she did not say anything like this to the manager, and that she in fact offered to send the manager an email later with more detailed answers. Audio Record at 38:40. Claimant also testified that she could not recall using foul language towards the manager and did not believe she had done so. Audio Record at 38:18.

The employer's witness was the employer's director of nursing, who directly supervised claimant's manager, but was not present for and had no firsthand knowledge of the meeting between claimant and the manager. As such, the director of nursing's testimony asserting that claimant had used foul language was hearsay. Claimant's manager did not testify at hearing, and the employer offered no documentary evidence to corroborate the director of nursing's testimony. Because first-hand testimony is entitled to greater weight than hearsay, the employer has not met their burden to show that claimant actually used foul or abusive language, such that she violated their policy, during the March 10, 2026 meeting.

Even if the employer had met their burden to show that claimant used foul language in the meeting, however, the record would still show that claimant's conduct was, at worst, an isolated instance of poor judgment. Other than the alleged conduct during the meeting, the employer alleged one other instance in which claimant might have violated the employer's policies or expectations: the circumstances in September 2025 which led claimant's manager to switch the schedules of claimant and her coworkers for a period of time. The employer's witness testified that she did not know what claimant or her coworkers had allegedly done. Audio Record at 19:37. Claimant, likewise, testified that the employer never told her what she was alleged to have done, explaining to her only that it was "a cultural and behavioral thing." Audio Record at 35:31. Because the employer could not describe how claimant allegedly violated their expectations in this situation, they have not met their burden to show that claimant violated their expectations at all, let alone willfully or with wanton negligence. The record does not show that claimant was ever disciplined for any other issues. As such, even if claimant *had* used foul language in the March 10, 2026 meeting, such willful or wantonly negligent conduct would have been isolated.

Additionally, claimant's alleged conduct on March 10, 2026 did not exceed mere poor judgment. The alleged conduct did not violate the law, nor was it tantamount to unlawful conduct. Claimant's alleged 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 alleged conduct otherwise make a continued employment relationship impossible, as it was not likely to reoccur, 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. Thus, even if the employer had met their burden to show that claimant acted as they alleged on March 10, 2026, claimant's conduct that day would have been no more than an isolated instance of poor judgment, which is not misconduct.

For the above 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-334741 is affirmed.

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

DATE of Service: September 17, 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 باتباع 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.

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