

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0759

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 22, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving unemployment insurance benefits effective May 24, 2026 (decision # L0018748955).¹ Claimant filed a timely request for hearing. On August 19, 2026, ALJ Janzen conducted a hearing at which the employer failed to appear, and on August 20, 2026 issued Order No. 26-UI-337802, affirming decision # L0018748955. On August 22, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument to the extent it was based evidence received into the hearing record.

FINDINGS OF FACT: (1) MAC Federal Credit Union Corp. employed claimant as a senior IT business analyst from October 2020 through May 28, 2026. Claimant worked full time for the employer, typically Monday through Friday.

(2) In 2025, claimant was on an approved medical leave of absence.

(3) From February 2, 2026 through April 2, 2026, claimant was on an employer-approved medical leave of absence from work.

(4) On April 6, 2026, the employer issued claimant a performance improvement plan (PIP) which identified the following areas of concern: "[e]xcessive utilization of paid and unpaid leave during the 2025 calendar year"; "[c]ontinued attendance and reliability concerns in 2026"; and "[f]ailure to

¹ Decision # L0018748955 stated that claimant was denied benefits from May 24, 2026 to May 22, 2027. However, decision # L0018748955 should have stated that claimant was disqualified from receiving benefits beginning May 24, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

consistently follow established communication expectations regarding work status, availability, and progress.” Exhibit 1 at 5. In relevant part, the PIP included terms stating that “[n]o unpaid leave will be approved during the duration of this PIP”; that “[e]xceptions will be made only where required by applicable law, including but not limited to approved leave under the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), or other applicable federal, state, or local regulations”; and that “[a]ll such requests must be coordinated through Human Resources.” Exhibit 1 at 6. The PIP was issued for a 30-day period. Claimant received and acknowledged the PIP.

(5) On April 13, 2026, claimant submitted to the employer a request for a religious accommodation, consisting of a request for time off from April 20, 2026 through May 8, 2026. Claimant indicated in the request that she was required to be away from work during that time period “based on a sincerely held religious belief and observance.” Exhibit 1 at 11. Claimant had made a similar request for the same period of observance in 2025, which the employer granted. The employer considered claimant’s request, and asked claimant for more information about it, including whether claimant could be flexible about the dates or duration. Exhibit 1 at 11. Claimant clarified that she could not be so flexible. In support of her request, claimant also submitted to the employer a letter from the president of her church, which affirmed that claimant’s accommodation request was “a matter of religious conscience,” and that the requested time off was for a period that required “[p]reparation, withdrawal from ordinary work demands, travel, ritual participation, spiritual discernment, integration, and return[.]” Exhibit 1 at 23. The employer continued to engage with claimant about her request for the next few days.

(6) On April 16, 2026, the employer mostly denied the request, citing “undue hardship” due to concerns about claimant’s absence during that period because she was one of only two staff members who had the expertise necessary to work on time-sensitive projects related to a merger the employer was undergoing. The denial included the caveat that claimant would be permitted to take time off if it was covered by paid time off (PTO), but that unpaid time off would not be permitted for that purpose. At the time, claimant had less than three hours of PTO available. Claimant received and understood the denial, but nevertheless determined to take her religious leave as requested, and told the employer the same.

(7) On April 20, 2026, claimant took her religious leave as planned, which continued through May 8, 2026. Almost all of the leave period was unpaid. On or around May 6, 2026, the PIP expired. On May 11, 2026, claimant returned to work.

(8) On May 28, 2026, the employer discharged claimant because she took her religious leave despite the employer having denied her accommodation request, thereby violating the PIP.

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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct. OAR 471-030-0038(3)(b). A conscious decision not to comply with an unreasonable employer policy is not misconduct. OAR 471-030-0038(1)(d)(C).

The employer discharged claimant because she took her religious leave despite the employer having denied her accommodation request. The PIP, which was still in effect for the majority of this period, prohibited claimant from taking any unpaid leave while it was in effect. As most of claimant’s leave during this period was unpaid, claimant violated the PIP by taking her leave despite the employer’s denial of the request. The record also shows that claimant was aware of the fact that the employer had denied her request, but took her leave in spite of the denial. As such, claimant willfully violated the employer’s expectations that she refrain from taking unpaid leave. The order under review concluded that this constituted misconduct because it was not an isolated instance of poor judgment or a good faith error. Order No. 26-UI-337802 at 4. The record does not support this conclusion.

Claimant took time off for the period in question due to what she asserted was a sincerely held religious belief, an assertion that was supported by her religious leader and which the employer did not rebut. Regardless of whether the employer had a legitimate business purpose for denying claimant’s request for time off for that reason, an employer does not have the right to expect its employees to forgo practices required by their sincerely held religious beliefs simply because the employer refuses to accommodate those practices. A finding of misconduct requires that the individual has violated willfully, or with wanton negligence, a standard of behavior that the employer has the right to expect of its employees. Because the employer did not have that right here, its expectations were unreasonable, and claimant’s refusal to abide by those expectations therefore was not misconduct.

Additionally, under OAR 471-030-0038(1)(d)(C), a conscious decision not to comply with an unreasonable employer policy is not misconduct. Claimant’s conduct here was exactly the type of circumstance contemplated under that provision of the rule. Claimant was aware of the employer’s expectation that she forgo her religious practice, which was not reasonable, and consciously chose not to comply with it. As such, under that provision of the rule as well, claimant’s decision to act in violation of the PIP by taking unpaid leave for religious purposes was not misconduct.

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

DECISION: Order No. 26-UI-337802 is set aside, as outlined above.

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

DATE of Service: October 6, 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

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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