

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0762

Reversed
No Disqualification

PROCEDURAL HISTORY: On July 15, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving without good cause, and that claimant therefore was eligible for unemployment insurance benefits from April 5 to 18, 2026 (weeks 14-26 and 15-26), but disqualified from receiving benefits effective April 19, 2026 (decision # L0018663338).¹ Claimant filed a timely request for hearing. On August 7, 2026, ALJ Wahl conducted a hearing at which the employer failed to appear, and on August 12, 2026 issued Order No. 26-UI-337251, modifying decision # L0018663338 by concluding that the employer discharged claimant, but not for misconduct, within 15 days of claimant's planned voluntary leaving without good cause, and that claimant therefore was eligible for benefits from April 5 to 11, 2026 (week 14-26), but disqualified from receiving benefits effective April 12, 2026. On August 26, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Providence Health & Services Oregon employed claimant as a food service attendant From September 9, 2024 until April 9, 2026. The employer employed claimant full-time and paid her \$21.50 per hour.

(2) On April 1, 2026, a different employer, the Department of Veteran Affairs (VA), offered claimant a job. The terms of the offer were that the job was to be a full-time, permanent position, and pay \$24.93 per hour. The VA job was to start on April 20, 2026.

¹ Decision # L0018663338 stated that claimant was denied benefits from April 19, 2026 to May 1, 2027. However, decision # L0018663338 should have stated that claimant was disqualified from receiving benefits beginning April 19, 2026 and until she earned four times her weekly benefit amount. See ORS 657.176.

(3) In the VA's job offer letter, they stated that claimant needed to pass a background check to be eligible for hire. As part of that background check, claimant needed to possess a REAL ID, an identification card that meets certain federal security standards. However, the offer letter merely stated that claimant would need to pass a background check and did not specify that possessing a REAL ID would be part of that background check process.

(4) On April 1, 2026, claimant gave notice of her intent to resign effective April 18, 2026. Sunday, April 19, 2026, was a day the employer typically scheduled claimant off work. Claimant's plan was to work through her notice period, have April 19, 2026 off work as usual, then begin working for the VA on Monday, April 20, 2026.

(5) On April 1, 2026, claimant made an appointment to complete the background check.

(6) On April 9, 2026, the employer discharged claimant. On that date, the employer sent claimant an email stating that they had "a right to end" claimant's employment early, and were doing so that day. Audio Record at 20:56. The employer did not give a reason for the discharge in the email.

(7) On April 12, 2026, claimant went to her background check appointment. At that time, claimant learned that possessing a REAL ID was part of the background check process.

(8) After claimant learned that she needed to possess a REAL ID to complete the background check process, she asked the employer if she could continue working for them until she obtained a REAL ID and could start the VA job. The employer "said no." Audio Record at 21:13.

(9) On May 1, 2026, claimant obtained a REAL ID. Thereafter, she began working the VA job.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct, within 15 days of claimant's planned voluntary leaving with good cause.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

The work separation was a discharge that occurred on April 9, 2026. On that date, which was during claimant's resignation notice period, the employer informed claimant that they had a right to end claimant's employment early, and were doing so that day. Claimant had planned to continue working for the employer until her resignation notice period ended on April 18, 2026. Because claimant was willing to continue working for the employer until April 18, 2026, but was not allowed to do so by the employer, the work separation was a discharge that occurred on April 9, 2026.

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). "[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, but not for misconduct. It is not evident why the employer discharged claimant because they did not give a reason for the discharge in their April 9, 2026 email. Accordingly, the employer, who did not appear at hearing, did not prove that they discharged claimant because she had engaged in a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her, or a disregard of the employer's interests. The employer therefore discharged claimant, but not for misconduct under ORS 657.176(2)(a).

ORS 657.176(7). Next, it is necessary to assess whether ORS 657.176(7) applies to this case. Under that statutory section, if a claimant notified their employer they would quit work on a specific date, and the quit would have been without good cause, but the employer discharged the claimant, not for misconduct, no more than 15 days before the date of the planned quit, then the separation from work is adjudicated as if the discharge had not occurred and the planned quit had occurred. ORS 657.176(7). However, the claimant is eligible for benefits for the week in which the actual discharge occurred through the week before the week of the planned quit. ORS 657.176(7).

The employer discharged claimant, not for misconduct, on April 9, 2026, which was within 15 days of claimant's planned leaving on April 18, 2026. Therefore, whether ORS 657.176(7) applies depends on whether claimant's planned leaving would have been without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Dept.*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Dept.*, 348 Or 605, 612, 236 P3d 722 (2010).

A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work left." OAR 471-030-0038(5)(a). In pertinent part, the Department does not consider a job offer to be definite "if [it is] contingent upon . . . [such things as] passing a drug test, background check, credit check and/or an employer receiving a contract." Oregon Employment Department, Unemployment Insurance Policy Guide 108 (3rd Quarter 2026 Update).

The order under review concluded that the employer discharged claimant, but not for misconduct, within 15 days of claimant's planned leaving without good cause. Order No. 26-UI-337251 at 3. As discussed

above, the record supports that the employer discharged claimant, but not for misconduct. However, the record does not support that claimant's planned leaving would have been without good cause.

Claimant's planned leaving was for reasons that constituted good cause. Addressing the elements of OAR 471-030-0038(5)(a), first, the VA job was to begin in the shortest length of time reasonable under the individual circumstances. Claimant's plan was to work through her notice period, resign on April 18, 2026, have April 19, 2026 off work as usual, then begin working for the VA on April 20, 2026. Under this plan, with only one day off between jobs, the VA job was to begin in the shortest length of time reasonable under the individual circumstances.

Next, the offer of work from the VA paid an amount that was more than the work claimant performed for the employer. The employer employed claimant full-time and paid her \$21.50 per hour, whereas the VA job would be full-time and pay claimant \$24.93 per hour. As \$24.93 is more than \$21.50, the VA job was to pay more than the work claimant performed for the employer.

Third, the offered work from the VA was reasonably expected to continue. The VA job was to be a permanent job of indefinite duration. The record therefore shows that the VA job was reasonably expected to continue.

Finally, the VA's offer of work likely would have been definite before claimant quit work, based on what she knew at the time she gave notice on April 1, 2026. At that time, per the VA's offer letter, claimant knew only of the background check contingency in general. On April 1, 2026, claimant promptly made an appointment for April 12, 2026 to complete the background check. At that April 12, 2026 appointment, claimant learned for the first time of the REAL ID requirement, and the record suggests that, absent needing a REAL ID, claimant would have passed the background check on that date. Therefore, claimant would have passed her background check before her planned April 18, 2026 quit date if not for the REAL ID requirement that claimant did not learn about until April 12, 2026. Claimant's planned quit therefore would have been with good cause based on what she knew at the time she gave notice.

For these reasons, claimant met the element of OAR 471-030-0038(5)(a), and her leaving planned for April 18, 2026, was for reasons that would have constituted good cause. ORS 657.176(7) therefore does not apply to this case. As such, the employer discharged claimant, but not for misconduct, and claimant therefore is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 26-UI-337251 is set aside, as outlined above.

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

DATE of Service: October 8, 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 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.

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