

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0768

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 for misconduct and claimant therefore was disqualified from receiving unemployment insurance benefits effective March 23, 2026 to May 22, 2027 (decision # L0018696863). Claimant filed a timely request for hearing. On August 5, 2026, ALJ Goodrich conducted a hearing, at which the employer failed to appear, and on August 13, 2026, issued Order No. 26-UI-337380, modifying decision # L0018696863 by concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving benefits effective May 3, 2026 and until requalified. On August 28, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Legacy Clinics LLC employed claimant from April 2016 until May 4, 2026.

(2) For most of claimant's tenure with the employer, she worked as a clinic support specialist, which was a front desk receptionist role. In March 2025, the employer transitioned claimant to work as a medical assistant (MA), a role that required claimant to hold a certification. The employer required claimant to complete her MA certification by March 23, 2026. In the period leading up to that date, claimant worked as an MA in a supervised capacity pending receipt of the certification. To obtain the certification claimant had to pass an MA certification test.

(3) On March 24, 2026, the employer placed claimant on leave due to her not having obtained her certification by the March 23, 2026 deadline.

(4) The employer expected claimant to return, within a reasonable time, her supervisor's phone calls regarding her taking of the MA certification test. Claimant broadly understood that, while on leave, she was required to stay in communication with her supervisor regarding her testing status.

(5) On March 27, 2026, claimant took the MA certification test online but did not pass it. Claimant registered to take the test again on April 28, 2026.

(6) On April 28, 2026, claimant began taking the MA certification test online. While in the midst of taking the test, the testing company experienced a technical issue and the test was interrupted and could not be completed that day. That day, claimant sent a text message to her supervisor explaining that she was going to contact the certification company to see when she could retake the test and that she would call the supervisor when she knew more.

(7) Although on leave, claimant had previously scheduled April 29, 30, and May 1, 2026, off work from the employer to attend to an urgent situation involving her children. May 2 and 3, 2026 were weekend days when the employer's clinic was closed.

(8) On April 29, 2026, claimant's supervisor called claimant and as claimant began to answer the call, her phone died from insufficient power and the call dropped. The supervisor then called claimant's emergency contact, claimant's mother, who conveyed to claimant that the supervisor was trying to contact claimant. Claimant did not make immediate efforts to reach back out to the supervisor because April 29, 2026 was a day she had scheduled off, she was busy attending to the urgent situation involving her children, and she had already informed the supervisor by text message that she would update the supervisor when she knew more about taking the test. Claimant intended to return the supervisor's call on Monday May 4, 2026, after the days she had scheduled off were over and following the weekend days when the clinic was closed.

(9) On May 4, 2026, the employer discharged claimant. On that date, the employer drafted and mailed a letter advising that claimant's employment was terminated effective that day because she was considered to have abandoned her job. On the same day, claimant's supervisor's manager sent an email to claimant's work team advising that claimant "would no longer be working with [the employer]." Transcript at 23. Two of claimant's coworkers who had seen that email sent text or social media messages to claimant informing her that her employment had ended. Claimant was in disbelief over the news that her employment had been terminated and did not contact the manager that day as she had planned, since her employment had ended. A few days later, claimant received the termination letter in the mail. Had claimant not been discharged on May 4, 2026, she would have returned the supervisor's call that day.

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 the employer discharged claimant for misconduct. Order No. 26-UI-337380 at 4-5. The record does not support this conclusion.

The employer expected claimant to return, within a reasonable time, her supervisor's phone calls regarding her taking of the MA certification test. Claimant broadly understood that, while on leave, she was required to stay in communication with her supervisor regarding her testing status. However, the record fails to show that claimant violated the employer's expectation willfully or with wanton negligence.

Claimant's supervisor attempted to call claimant on April 29, 2026, but due to insufficient battery, claimant's phone dropped the call. Claimant intended to return the supervisor's call on Monday, May 4, 2026, and would have returned the call on that day but for the fact that the employer discharged her on that day. Although May 4, 2026 was several days after the April 29, 2026 dropped call, claimant did not willfully or with wanton negligence fail to return the supervisor's call within a reasonable time because claimant had previously arranged for April 29, 30, and May 1, 2026, to be off work from the employer to attend to an urgent situation involving her children. On those days, claimant was strictly "dealing with [her] kids" and "didn't respond to anybody." Transcript at 21. Likewise, it was not unreasonable for claimant to decline to return the supervisor's call on May 2 and 3, 2026, because those were weekend days when the clinic was closed. Accordingly, claimant's failure to return the supervisor's call on April 29, 2026 because she was off and managing an urgent situation with her children, with the intention to return the supervisor's call on May 4, 2026, did not amount to a willful or wantonly negligent violation of the employer's expectation that she return the supervisor's call within a reasonable time.

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

DECISION: Order No. 26-UI-337380 is set aside, as outlined above.

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

DATE of Service: October 9, 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.

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

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