

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0773

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 29, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective March 15, 2026 (decision # L0018443281).¹ Claimant filed a timely request for hearing. On August 7, 2026, ALJ Griffith conducted a hearing, and on August 12, 2026 issued Order No. 26-UI-337266, affirming decision # L0018443281. On August 31, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) SE Works, Inc. employed claimant as their workforce development director from December 16, 2024 through March 16, 2026. Claimant's job duties included overseeing job fairs, managing a team of employees, handling budgetary and other administrative responsibilities. Claimant frequently worked with adult job-seekers and employers. Claimant occasionally and incidentally came into contact with children while he was working, such as when clients brought their children with them to the employer's premises.

(2) In June 2022, claimant was charged with three counts of misdemeanor harassment in Columbia County, Oregon, alleged to have occurred between October and December 2021. In August 2024, the Columbia County district attorney's office filed a superseding district attorney's information in the same case against claimant. Exhibit 1 at 132–133. This second charging instrument included six misdemeanor charges of sexual abuse, all pertaining to alleged incidents of sexual contact with minors that occurred between September and December 2021. Exhibit 1 at 134–136.

(3) The employer maintained a policy which stated, in relevant part:

¹ Decision # L0018443281 stated that claimant was denied benefits from March 15, 2026 to April 24, 2027. However, decision # L0018443281 should have stated that claimant was disqualified from receiving benefits beginning Sunday, March 15, 2026 and until he earned four times his weekly benefit amount. See ORS 657.176.

Criminal history checks will be required for all employees and volunteers before they start work with [the employer]. New employees and volunteers are required to review the disclosure form and complete the written authorization. Failure to provide consent may be grounds for termination or rescission of offer of employment. [The employer] reserves the right to require a more comprehensive review of an employee's criminal history on a case-by-case basis.

Employees must immediately report a charge or conviction of a felony or misdemeanor to their immediate supervisor so that impact of such event can be assessed and employment limitations evaluated.

A conviction of a felony or misdemeanor will not necessarily disqualify an applicant from being hired for or retained in a position. However, failure of an employee to report any charge, conviction or misdemeanor may result in termination or rescission of an offer.

* * *

Falsified or omissions of requested information on a resume or criminal history form may be grounds for termination. Any new charge for a felony or misdemeanor of a current employee will be reviewed and may be grounds for termination. The Executive Director is the only individual authorized to approve continuation of employment.

Exhibit 1 at 32–33. Claimant received a copy of this policy at the time of hire.

(4) Prior to being hired, claimant authorized the employer to conduct a background check on him, in accordance with their policy. The form claimant completed to authorize the background check did not ask him if he had ever been arrested, charged with a crime, or convicted of a crime, and claimant did not separately volunteer the pending charges against him on the form. The background check only included information regarding convictions, not pending criminal charges. However, claimant was not aware of this fact. At his previous job, his then-employer had learned of the charges pending against him when they conducted a background check. Based on this experience, claimant believed that the employer's background check *would* show any charges pending against him. Once the background check was completed and claimant had been onboarded, the employer did not separately ask claimant to disclose any criminal charges or convictions, and claimant did not volunteer such information. Claimant did not intentionally try to conceal the pending charges, but instead believed that disclosing them separately was not required under the policy due to the background check, and that he was only required to disclose new charges or convictions as they arose.

(5) On February 24, 2026, claimant, who has epilepsy, suffered a seizure at work. In the postictal state immediately following the seizure, claimant approached a coworker's desk and began rocking it back and forth, while claimant was within close range of the coworker's face. Claimant was not in control of himself at the time and did not intend or remember any of his actions during that period. However, due to the unsettling nature of claimant's actions, the employer initially considered them to be an "attack" on the coworker. Transcript at 15. The employer immediately placed claimant on leave and, after learning the incident was the result of a seizure, required claimant to obtain a fitness-for-duty certification from a neurologist before returning to work. Claimant complied with the employer's requirements in this regard.

(6) While claimant was on leave, the employer, who remained skeptical of claimant's motives during the February 24, 2026 incident, began a "direct threat assessment" investigation into claimant's background. Transcript at 7. Upon doing so, the employer discovered the charges pending against claimant.

(7) On March 16, 2026, the employer discharged claimant because he had failed to disclose the charges pending against him. At the time he was discharged, the charges against him remained pending, claimant had not been convicted of any crimes, and claimant was not restricted from working around children.

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 because he had failed to disclose the criminal charges pending against him. The employer's policy required, in relevant part, that "employees must immediately report a charge or conviction of a felony or misdemeanor to their immediate supervisor so that impact of such event can be assessed and employment limitations evaluated." Claimant misunderstood this provision to mean that he was only separately required to immediately report to the employer *new* charges or convictions which arose during the employment relationship. This misunderstanding resulted from the employer's separate requirement that claimant submit to a criminal background check, with which claimant complied; and his related understanding, based on a similar experience at his previous job, that the criminal background check would show any pending charges as well as convictions.

The above provision of the employer's policy is, admittedly, ambiguous. However, it is not necessary to determine what the drafter of this policy actually intended because the record is clear that the employer, regardless of the wording of the policy, expected claimant to disclose the charges against him separately from the background check process. As such, claimant's failure to do so violated the employer's reasonable expectation that he do so. Because of the ambiguity of this provision of the policy, claimant's previous experience with a similar background check, and the employer's lack of rebuttal, claimant's

explanation as to why he did not separately disclose the pending charges is plausible. However, claimant could have reasonably discerned the importance to the employer that he thoroughly disclose any criminal matters in which he was involved and, in the face of such ambiguity, inquired as to whether a separate disclosure of the pending charges was necessary. Because he failed to do so here, the record shows that claimant, more likely than not, omitted this information without regard to the consequences of his actions. Claimant therefore violated the employer's expectations with wanton negligence.

The order under review concluded similarly, but further concluded that claimant's conduct could not be considered an isolated instance of poor judgment because "his omission concealed alleged unlawful conduct, created an irreparable breach of trust in the employment relationship, and otherwise made a continued employment relationship impossible." Order No. 26-UI-337266 at 4–5. The record does not support the conclusion that claimant's conduct was not an isolated instance of poor judgment.

Claimant's failure to disclose the pending charges was a single act, and the record does not show that claimant ever violated the employer's policies or expectations at any other point in time. As such, claimant's conduct was isolated. Additionally, claimant's failure to disclose the pending charges did not exceed mere poor judgment. OAR 471-030-0038(1)(d)(D) excludes four categories of conduct from a finding that the conduct was an isolated instance of poor judgment: acts that violate the law, that are tantamount to unlawful conduct, that create irreparable breaches of trust in the employment relationship, or that otherwise make a continued employment relationship impossible. The employer has not met their burden to show that any of these exceptions apply to claimant's failure to disclose the pending charges.

First, the order under review erred in concluding that claimant's failure to disclose the pending charges either violated the law or was tantamount to unlawful conduct. In so concluding, the order under review mistakes the proximate cause of the employer's decision to discharge claimant: not the pending charges themselves, but claimant's *failure to disclose them*. While the employer's policy may well have required claimant to make such a disclosure, the record lacks evidence to show that he was legally required to do so. Additionally, even if the employer had actually discharged claimant because of the charges, rather than his failure to disclose them, the record contains no account of the incidents which led to the allegations against claimant, and claimant had not been convicted of any crime at the time he was discharged. Therefore, the record does not show, by a preponderance of the evidence, that the conduct for which claimant was discharged either violated the law or was tantamount to unlawful conduct.

The record similarly does not show, by a preponderance of the evidence, that claimant's failure to disclose the pending charges created an irreparable breach of trust in the employment relationship. Under *Callaway v. Employment Dept.*, 225 Or App 650, 202 P3d 196 (2009), a determination of whether a claimant's conduct caused a breach of trust is objective, not subjective, and the employer cannot unilaterally announce a breach of trust if a reasonable employer in the same situation would not; *see accord Isayeva v. Employment Dept.*, 266 Or App 806, 340 P3d 82 (2014). As explained above, claimant had reason to believe that the employer's policy did not require him to separately disclose the charges because they would show up on the criminal background check. Although this belief was erroneous, the employer did not rebut claimant's assertion that it was genuine. Thus, claimant's failure to disclose the charges, even if wantonly negligent, was a mistake, and therefore is not sufficient to show that he acted with intent to conceal the charges or otherwise mislead the employer. Under such circumstances, a reasonable employer could conclude that the failure to disclose did not create an irreparable breach of trust in the employment relationship.

Finally, the employer has not met their burden to show that claimant's failure to disclose the charges otherwise made a continued employment relationship impossible. To be clear, the charges against claimant, if proven true, are troubling. Because the employer discharged claimant merely for failing to disclose the charges, however, they have not shown by a preponderance of the evidence that the nondisclosure would, itself, have impeded any essential aspect of the relationship, threatened its continued existence, or expose the employer to risk of on-going legal jeopardy or non-compliance with a regulatory duty.

Because the employer has not met their burden to show that any of the exceptions under OAR 471-030-0038(1)(d)(D) apply to the reason that they discharged claimant, the record does not show that claimant's failure to disclose the pending charges exceeded mere poor judgment. As such, claimant's conduct was an isolated instance of poor judgment, which is not 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.

DECISION: Order No. 26-UI-337266 is set aside, as outlined above.

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

DATE of Service: October 13, 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

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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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