

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0774

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On July 10, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective February 11, 2026 (decision # L0018639410). Claimant filed a timely request for hearing. On July 30, 2026, ALJ Enyinnaya conducted a hearing and issued Order No. 26-UI-336291, modifying decision # L0018639410 by concluding that claimant was discharged for misconduct and was therefore disqualified from receiving benefits effective February 15, 2026.¹ On August 19, 2026, Order No. 26-UI-336291 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On August 31, 2026, claimant filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's late application for review and accompanying statements, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Jacksons Food Stores employed claimant as a cashier from July 26, 2025 through February 17, 2026.

(2) The employer expected their employees to report for work as scheduled and provide timely notice if they would be late or absent from a shift. Claimant understood this expectation.

¹ Although Order No. 26-UI-336291 stated it affirmed decision # L0018639410, it modified that decision by changing the beginning date of the disqualification from February 11, 2026 to February 15, 2026. Order No. 26-UI-336291 at 5.

(3) On February 11, 2026, after claimant left work for the day, she was arrested, and thereafter remained in jail until April 6, 2026. Claimant did not notify the employer of her arrest or that she would be unable to attend work for the foreseeable future, but intended to return to work as soon as she was released from custody.

(4) On February 15 and 16, 2026, claimant had been scheduled to work but did not report for work because she was incarcerated. On February 17, 2026, the employer considered claimant to have quit work by having been absent without notice for the previous two shifts.

(5) On April 6, 2026, claimant was released from jail and contacted the employer to inquire about her employment status. Claimant was told that her employment had ended after the February 16, 2026 absence and that she was ineligible for rehire.

(6) Order No. 26-UI-336291, mailed to claimant's address on file on July 30, 2026, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 26-UI-336291 at 5. Order No. 26-UI-336291 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before August 19, 2026 to be timely."

(7) On August 18, 2026, claimant spoke with a Department representative by phone regarding her appeal. The representative noted: "[C]lmt states they attended hearing and got VQ denial decision for JACKSONS FOOD STORES reversed. Advised OAH comment from 7/31/26 does not state this and they are still denied. Clmt wanted to file another appeal for hearing denial. Provided OAH number."²

(8) On August 31, 2026, claimant sent an email to EAB that was construed as a late application for review. In the email, claimant stated that occupants of the address where Order No. 26-UI-336291 had been mailed "withheld [the] letter from the hearing [she] had on July 30th" and that she was "unaware that [her appeal] was denied[.]" EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Order No. 26-UI-336291 is set aside, and the matter remanded for further proceedings.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ended. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

The application for review of Order No. 26-UI-336291 was due by August 19, 2026. Claimant's application for review was filed on August 31, 2026, and was therefore late. Claimant asserted that her application for review was filed late because the order was "withheld" from her by occupants of the address to which it was sent. Notes from claimant's August 18, 2026 phone call with a Department representative suggest that claimant understood at that time that an order had been issued, but claimant had been under the mistaken impression that she had prevailed in the appeal until the representative told her otherwise. This supports the inference that claimant had not personally received or read Order No. 26-UI-336291 by the August 19, 2026 filing deadline due to her mail being intercepted. More likely than not, this was a factor beyond claimant's reasonable control that prevented timely filing of an application for review. Good cause therefore exists to extend the filing deadline.

Moreover, claimant's August 31, 2026 email to EAB, that was construed as a late application for review, suggests that she had not yet obtained a copy of Order No. 26-UI-336291, and had therefore not received written notice of her appeal rights. See EAB Exhibit 1 at 1. As the factor that prevented timely filing had not ended prior to August 31, 2026, the late application for review was filed within a "reasonable time." Accordingly, claimant's late application for review is allowed.

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).

Claimant's employment ended due to her failure to report for work or notify the employer that she would be absent on February 15 and 16, 2026. The employer considered claimant to have quit work due to these absences and the lack of communication. However, claimant remained willing to continue working for the employer despite her temporary inability to do so while incarcerated and did not tell the employer otherwise. Claimant attempted to resume working upon her April 6, 2026 release from jail, but was told by the employer that her employment was considered terminated as of February 17, 2026, and that they were unwilling to rehire her. Therefore, the record shows that claimant was willing to continue in the employment relationship on and after February 17, 2026, while the employer was unwilling to do so. Accordingly, the work separation was a discharge that occurred on February 17, 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).

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 due to her absence without notice from two consecutive shifts. The employer reasonably expected their employees to report for work as scheduled and provide timely notice if they would be absent from a shift, and claimant understood this expectation. Claimant explained at hearing that she was arrested and jailed on February 11, 2026 for her involvement in an “altercation with somebody” and that she did not attempt to notify the employer of this until her April 6, 2026 release because she believed the only method by which she could do so was calling collect. Audio Record at 10:23, 31:38. The order under review concluded that claimant was discharged for misconduct connected with work because her incarceration prevented her attendance at work, which violated the employer’s policies. The record as presently developed does not support this conclusion, and remand for further development is warranted.

Where off-duty conduct makes it impossible for a claimant to comply with the employer’s attendance requirements, the relevant question is whether claimant willfully created the situation that made it impossible for them to attend work or to comply with the policy. *Weyerhaeuser Co. v. Employment Div.*, 107 Or App 505, 812 P2d 44 (1991). To determine whether claimant acted willfully or with wanton negligence in the incident that led to her incarceration, inquiry should be made into the circumstances of that incident including claimant’s actions and state of mind; whether claimant initiated the “altercation” or was acting out of self-defense; what criminal charges were filed against claimant and whether she was convicted of any of them; and any other factors relevant to this analysis.

Furthermore, if the record on remand shows that claimant was prevented from attending work due to her willful or wantonly negligent conduct, inquiry should be made into whether this was an isolated instance of poor judgment. Because claimant missed both the February 15 and 16, 2026 shifts as a result of the February 11, 2026 incident, this was a single occurrence for purposes of OAR 471-030-0038(1)(d)(A). The record suggests that claimant had also been absent without notice on January 7, 2026, and tardy on October 13, 2025, but the circumstances of these alleged policy violations were not explored to determine whether they involved willful or wantonly negligent conduct, and the record on remand should be developed in that regard. Audio Record at 27:21. If the record on remand supports that claimant’s final absences from work were “isolated,” inquiry should be made into whether they exceeded mere poor judgment, including whether the length of her incarceration combined with her failure to notify the employer of the situation made a continuing employment relationship impossible.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was discharged for misconduct, Order No. 26-UI-

336291 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Claimant's late application for review is allowed. Order No. 26-UI-336291 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 13, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-336291 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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

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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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