

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0775

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 5, 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 June 7, 2026 to June 5, 2027 (decision # L0019129886). Claimant filed a timely request for hearing. On August 24, 2026, ALJ Laurie-Gardiner conducted a hearing, and on August 25, 2026 issued Order No. 26-UI-338137, modifying decision # L0019129886 by concluding that the employer discharged claimant for misconduct and claimant therefore was disqualified from receiving benefits effective June 7, 2026 and until requalified. On August 31, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Wild Horse Resort & Casino employed claimant as a security administrator in their information technology (IT) department from August 1, 2022 until June 11, 2026. The employer's workplace was located in Pendleton, Oregon.

(2) The employer prohibited employees from engaging in insubordination or other disrespectful actions or language to a supervisor. Claimant understood this expectation.

(3) When claimant's employment for the employer began, he worked on site at the employer's workplace in Pendleton. Claimant lived in Pendleton at the time and had about a 10-minute commute to work, each way.

(4) Beginning in or around June 2025, claimant started to work a hybrid remote schedule. Claimant had family in West Richland, Washington, and had wished to move there. Claimant arranged with his supervisor to work 10 hours per day, Monday through Thursday, with Monday and Tuesday on site in Pendleton and Wednesday and Thursday remote. With this schedule in place, claimant moved from Pendleton to West Richland. Claimant's commute to work from West Richland was about an hour and

10 minutes, each way. Claimant understood that working a hybrid remote schedule was a privilege that was subject to being revoked at any time.

(5) Over time, after claimant began the hybrid remote schedule, the employer developed concerns with his job performance. In particular, on May 27, 2026, claimant had a meeting with his supervisor and the employer's director of IT to discuss a firewall issue. In this meeting, the director of IT asked claimant a question. Claimant did not fully understand the question he was asked and responded, "I don't know." Transcript at 19. However, the director of IT felt that claimant failed to engage competently, and claimant received a disciplinary write-up for his conduct during the meeting.

(6) On June 1, 2026, claimant's supervisor and the director of IT met with claimant. The two mentioned to claimant their concerns regarding his performance. A human resources (HR) employee was also present for the meeting, and had prepared a draft performance improvement plan for claimant. The supervisor and the director of IT mentioned, in passing, the possibility of returning claimant to work exclusively on site. Claimant raised concerns of his own regarding the IT department having poor communication and leadership. The HR employee later decided to not move forward with placing claimant on a performance improvement plan.

(7) On June 10, 2026, one of claimant's remote workdays, claimant met virtually with the supervisor and the director of IT. In the meeting, the supervisor informed claimant that his schedule was returning to five days a week, on site at the workplace in Pendleton, and that he was expected to work the next day, Thursday June 11, 2026, in Pendleton. Claimant responded, "nah." Transcript at 13. The supervisor repeated that claimant was expected to work at the employer's physical workplace in Pendleton on June 11, 2026. Claimant responded that he would not do that, and would continue to work the hybrid remote schedule.

(8) Claimant refused the schedule change because it would add three days per week commuting to and from West Richland in addition to the existing two days per week of commuting he had been doing. He also helped transport his partner's child back and forth from school on some days and believed the schedule change might interfere with that.

(9) On June 11, 2026, claimant did not go to the employer's workplace to work as instructed. That morning, claimant signed in remotely, ready to work, and sent a chat on an IT department channel stating that he was signed in remotely and listing some work he planned to do that day.

(10) The director of IT saw claimant's chat and concluded that claimant was "openly defiant" of the instruction to return to the employer's workplace to work. Transcript at 25. The director of IT then sent a request to the HR department to discharge claimant. Later that day, an HR employee called claimant and told him that he had been discharged. The employer discharged claimant for failure to appear for work at the employer's physical workplace on June 11, 2026.

CONCLUSIONS AND REASONS: The employer discharged claimant 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 for failure to appear for work at the employer’s physical workplace on June 11, 2026, an expectation that was conveyed to claimant during the meeting on June 10, 2026. This expectation was reasonable as the employer adopted the policy change to address a perceived decline in claimant’s work performance, and claimant was aware that the hybrid remote schedule he had been working was a privilege that was subject to being revoked at any time. While the commute between West Richland and Pendleton was long, it was not so onerous as to be unreasonable. It is not uncommon for workers to undertake commutes to work of about one hour each way, and claimant had made the one hour and 10-minute commute each way every week on Mondays and Tuesdays under his hybrid remote schedule. Although the expectation that claimant begin to work again at the employer’s physical workplace was imposed without advance notice, it is not evident that it was impossible or unduly burdensome for claimant to comply. At hearing, claimant generally testified that he “help[ed] with getting [his partner’s child] to school and coming back.” Transcript at 23. However, claimant did not assert or show that a responsibility to transport the child specifically interfered with him working at the employer’s physical workplace on June 11, 2026, as he had been instructed, or, if a conflict existed, that alternative transportation arrangements for the child could not have been made.¹

Accordingly, the employer had a reasonable right to impose the expectation that claimant work at the employer’s physical workplace on June 11, 2026. That day, claimant intentionally violated the expectation by failing to go to the employer’s workplace to work as instructed and instead signing in from home and sending a chat on an IT department channel stating that he was signed in remotely and listing some work he planned to do that day. Thus, claimant willfully violated the employer’s expectations on June 11, 2026.

Claimant’s willful violation was not an isolated instance of poor judgment. First, the willful violation was not isolated. In the meeting on June 10, 2026 in which the supervisor conveyed that claimant was

¹ For example, if there had been a conflict, it stands to reason that the child may have been transported to school on June 11, 2026 via the means of transportation used on Mondays and Tuesdays as claimant presumably had not been responsible for the child’s transportation on those days, the days he worked at the employer’s physical workplace under the hybrid remote schedule.

expected to work at the employer's physical workplace on June 11, 2026, claimant willfully violated the employer's prohibition on insubordination. That day, the supervisor informed claimant that his schedule was returning to five days a week, on site at the workplace in Pendleton, and that he was expected to work the next day, June 11, 2026, in Pendleton, and claimant responded, "nah." Transcript at 13. The supervisor then repeated that claimant was expected to work in Pendleton on June 11, 2026, and claimant again defied her, stating that he would not do that, and would continue to work the hybrid remote schedule. These repeated acts of defiance in the meeting amounted to willful insubordination or other disrespectful actions toward the supervisor, which claimant understood he was prohibited from engaging in. Therefore, claimant's June 11, 2026 willful violation of the expectation to work at the employer's physical workplace was a repeated act or pattern of other willful or wantonly negligent behavior related to claimant's insubordinate conduct on June 10, 2026.

Moreover, claimant's June 11, 2026 willful violation made a continued employment relationship impossible. The employer had made clear that claimant's schedule was returning to five days a week, on site at the workplace in Pendleton, yet claimant maintained that he would continue to work the hybrid remote schedule of 10 hours per day, Monday through Thursday, with Monday and Tuesday on site in Pendleton and Wednesday and Thursday remote. Claimant's defiance of the work schedule imposed by the employer threw into disarray a central component of the employment relationship: the days and hours claimant would work, and where that work would be performed. With the employer and claimant in disagreement and at an impasse on these key features of their relationship, the record supports the conclusion that a continued employment relationship was not possible. As such, claimant's June 11, 2026 willful violation exceeded mere poor judgment under OAR 471-030-0038(1)(d)(D) and, for this additional reason, did not constitute an isolated instance of poor judgment.

For these reasons, the employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits effective June 7, 2026.

DECISION: Order No. 26-UI-338137 is affirmed.

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

DATE of Service: October 14, 2026

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

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