State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0819

Reversed & Remanded

PROCEDURAL HISTORY: On July 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the discharge (decision # L0018459426). The employer filed a timely request for hearing. On August 11, 2026, ALJ Andersen conducted a hearing at which claimant failed to appear, and on August 17, 2026 issued Order No. 26-UI-337567, affirming decision # L0018459426. On September 4, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

The parties may offer new information, such as the new information in the employer's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Jacksons Food Stores employed claimant as a customer service representative at one of their convenience stores from June 21, 2022 through May 1, 2026.

(2) The employer maintained a policy that required employees to de-escalate situations involving theft or suspected theft. The policy prohibited physically or verbally confronting a thief, blocking a thief from exiting the store, chasing a thief out of the store, touching a thief or taking anything from them, or accusing someone of theft. The employer considered a single violation of this policy to be grounds for

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termination. Claimant was provided with a copy of the policy, most recently in January 2026, for which he signed an acknowledgment of receipt. Claimant had also been trained on this policy, and understood it.

(3) On April 30, 2026, claimant was working in the employer's store when he learned that a person had exited the store with one of the employer's shopping baskets. Claimant proceeded to follow the person out of the store and across the store's parking lot. Claimant retrieved the basket, and returned to the store after about five minutes.

(4) A member of management learned of claimant's actions on April 30, 2026 and viewed the incident on the store's security camera footage. On May 1, 2026, the manager called claimant and spoke to him about the incident. During the call, claimant admitted to having followed the person who took the basket, and that he knew he had violated the employer's policy by doing so. Claimant also apologized for violating the policy, and explained that he knew he should not have followed the person out of the store but wanted to bring the employer's property back. The employer discharged claimant that day for having violated their de-escalation policy.

(5) Prior to April 30, 2026, claimant had never violated the employer's de-escalation policy. However, claimant had previously received five warnings for unrelated policy violations.

CONCLUSIONS AND REASONS: Order No. 26-UI-337567 is reversed, and this matter remanded for further development of the record.

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, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience 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 violated the employer's de-escalation policy on April 30, 2026 by following a person out of the store who had taken one of the store's shopping baskets. The record shows that claimant was aware that this conduct violated the employer's policy, but that he acted as he did merely because he wished to stop the theft. As such, claimant willfully violated the employer's policy. Additionally, because the record shows that claimant was aware that his conduct violated the policy, and lacks evidence to show that claimant had a factual basis for believing that the employer would condone it, claimant's conduct was not a good faith error. *See Goin v. Employment Dept*., 203 Or App 758, 126 P3d 734 (2006) (Claimant's incorrect assumption caused her to violate the employer's policy, but she acted in good faith).

The order under review acknowledged that claimant violated the employer's policy with at least wanton negligence, but nevertheless concluded that claimant's conduct was an isolated instance of poor judgment because he had "no history of prior warnings for similar conduct," and that the conduct was therefore isolated. Order No. 26-UI-337567 at 2–3. The record as developed does not support the conclusion that claimant's conduct was isolated.

OAR 471-030-0038(1)(d)(A) considers conduct to be "isolated" if it is a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. Claimant had never previously violated the employer's de-escalation policy, and his conduct on April 30, 2026 was therefore not a repeated act. However, the record also shows that claimant had previously violated other policies on five occasions. No further testimony was taken on this point, and the record therefore lacks details to show whether claimant's prior violations constituted willful or wantonly negligent violations of the employer's expectations, such that his conduct on April 30, 2026 could be considered part of a pattern of other willful or wantonly negligent behavior. On remand, the ALJ should develop the record to show what each of these prior violations were, when they occurred, what policies they violated, how claimant knew or had reason know of the expectations he violated, and why, in each instance, he acted as he did.

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's conduct on April 30, 2026 was an isolated instance of poor judgment, Order No. 26-UI-337567 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-337567 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: <u>October 19, 2026</u>

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-337567 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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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