EO: Intrastate
BYE: 03-Jul-2027

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

829
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0820

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 11, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving unemployment insurance benefits effective July 5, 2026 (decision # L0019147071).[1] Claimant filed a timely request for hearing. On August 28, 2026, ALJ Adamson conducted a hearing, and on August 31, 2026 issued Order No. 26-UI-338651, affirming decision # L0019147071. On September 5, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer each submitted written arguments. EAB considered claimant's argument when reaching this decision. EAB did not consider the employer's argument because they 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).

FINDINGS OF FACT: (1) Hero Sushi & Sake Bar employed claimant as a server from December 2025 until July 6, 2026.

(2) The employer prohibited servers from pouring shots of liquor without first placing an order for the shot in the employer's point of sale (POS) system. This expectation was not in writing, and claimant was not aware that he was strictly prohibited from pouring a shot without first placing an order for the shot in the POS system.

(3) On May 1, 2026, claimant was working and poured himself a shot of hard liquor to consume after his shift. When claimant's shift ended, he consumed the shot. He then wanted another shot of hard liquor and began to get one when he was interrupted by the manager. The manager told claimant that he could

[1] Decision # L0019147071 stated that claimant was denied benefits from July 5, 2026 to July 3, 2027. However, decision # L0019147071 should have stated that claimant was disqualified from receiving benefits beginning July 5, 2026 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

not pour a second shot because he was "off the clock and that would now qualify as self-service," which was against the policy of the state entity that regulates the sale of alcohol. Audio Record at 24:02. The manager believed that during this encounter, she told claimant that "hard liquor is not for employees," only customers. Audio Record at 16:33.

(4) On July 4, 2026, the employer observed claimant pour a shot of vodka without first placing an order for it in the POS system. Claimant placed the shot on a shelf intending to drink it after his shift was over and he had been relieved by another employee. The employer then approached claimant and asked what he was doing. Claimant explained his intentions and put an order for the shot into the POS system. The employer mentioned that there were still 30 minutes left in claimant's shift. Claimant poured the shot back into the bottle and never drank it.

(5) On July 6, 2026, the employer discharged claimant based on claimant's conduct on July 4, 2026 of pouring the shot of vodka without first placing an order for it in the POS system.

CONCLUSIONS AND REASONS: The employer failed to establish that claimant's discharge was 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-338651 at 2-3. The record does not support this conclusion.

At hearing, the employer's witness testified that on July 4, 2026, she observed claimant pour a shot of vodka without first placing an order for it in the POS system. Audio Record at 10:04 to 11:19. The witness further testified that the employer's policy prohibited servers from pouring a shot of liquor without first placing an order for the shot in the POS system, and that this was "the behavior" for which the employer discharged claimant. Audio Record at 15:47.

For his part, when asked if he was aware of this policy, claimant testified that he "was not very aware of the policy, it was not very clearly dictated nor written down." Audio Record at 23:05. Claimant would have had no reason to become aware of the policy based on the circumstances of May 1, 2026. On that occasion, the employer interrupted claimant before claimant could get a second shot of hard liquor. The employer's witness testified that she then told claimant that he could not have hard liquor at all, while claimant testified that he was informed he could not pour a second shot because he was off the clock. *See* Audio Record at 16:33, 23:58. Regardless, the record does not show that the circumstances of May

1, 2026, placed claimant on notice that he was strictly prohibited from pouring a shot without first placing an order for the shot in the POS system, the conduct for which the employer discharged him.

Accordingly, the employer failed to prove that claimant knew or should have known that pouring the shot on July 4, 2026 without first placing an order for it in the POS system probably violated the employer's expectations. As such, the employer did not show that the conduct for which they discharged claimant was a willful or wantonly negligent violation of those expectations.

For the above reasons, the employer failed to establish that claimant's discharge was for misconduct. Claimant therefore is not disqualified from receiving benefits based on the discharge.

DECISION: Order No. 26-UI-338651 is set aside, as outlined above.

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

DATE of Service: October 21, 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.

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*
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