EO: Intrastate
BYE: 13-Feb-2027

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

783
DS 005.00
MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0821

Reversed & Remanded

PROCEDURAL HISTORY: On July 27, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving unemployment insurance benefits effective February 15, 2026,[1] and was overpaid $11,645 in benefits that she must repay to the Department (decision # L0018809091). Claimant filed a timely request for hearing. On August 18, 2026, ALJ Janzen conducted a hearing, and on August 19, 2026 issued Order No. 26-UI-337715, reversing decision # L0018809091 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the discharge, and therefore was not overpaid benefits that she was required to repay. On September 6, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider the employer's written 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).

EVIDENTIARY MATTER: The record contains two documents marked as Exhibit 1, but lacking page numbers. One of these documents, 26 pages in length, concerns the merits of claimant's work separation. The other document, 29 pages in length, pertains to the filing of claimant's claim for benefits itself and potential charges to the employer related to the claim. For the sake of clarity in the record, the former document is considered to be the first part of Exhibit 1, comprising pages 1 through 26; and the latter document is considered to be the second part of Exhibit 1, comprising pages 27 through 55.

FINDINGS OF FACT: (1) Wallowa Valley Center for Wellness employed claimant as a case manager from August 13, 2024 through February 17, 2026.

[1] Decision # L0018809091 stated that claimant was denied benefits from February 15, 2026 to February 13, 2027. However, decision # L0018809091 should have stated that claimant was disqualified from receiving benefits beginning February 15, 2026 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(2) The employer expected their case managers to correctly document contacts and encounters with their clients, and to deliver care according to the employer's established standards of care and treatment plans. Claimant generally understood these expectations.

(3) On April 16, 2025, July 2, 2025, October 31, 2025, November 6, 2025, and December 9, 2025, the employer issued warnings to claimant because they felt she had not been seeing some of her clients in accordance with the clients' treatment plans or the employer's standards of care, or had not been properly documenting her interactions with her clients. Claimant disagreed with the employer's assessments of her work in many of these instances, but nevertheless attempted to comply with the directions indicated in these warnings. However, claimant had difficulty understanding what the employer expected of her.

(4) On December 22, 2025, the employer placed claimant on a performance improvement plan (PIP) because they felt she was still failing to meet their expectations regarding the above concerns. The PIP, which required claimant to improve in the areas identified within 90 days of its issuance, included "templates" of improvements that the employer required claimant to make. Transcript at 37. Claimant attempted to comply with these required improvements, and felt she had done so. On February 4, 2026, the employer issued an updated PIP to claimant, which determined, in relevant part, that claimant had not made sufficient improvements since the issuance of the original PIP.

(5) In early February 2026, claimant's manager directed her to provide the employer with "a review of [claimant's] case load with gaps in care clearly identified in writing by 2/11/26." Exhibit 1 at 24. Claimant provided her manager with the requested documentation. After receiving the documentation, claimant's manager asked claimant, "for clarification/confirmation to ensure there was not missing documentation in the patient charts or elsewhere because [the manager felt that a] review of patient care in the charts for the date span provided (12/19/26 to present) indicated that there were clearly gaps in care during this timeframe." Exhibit 1 at 24. On February 13, 2026, claimant sent the manager a response which the manager understood to mean that "there were gaps in care during the date span requested for review." Exhibit 1 at 24.

(6) On February 17, 2026, the employer discharged claimant because they felt that claimant had failed to meet the terms of the PIP by adhering to her clients' treatment plans and standards of care, and related concerns such as documentation.

(7) On February 18, 2026, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant's weekly benefit amount to be $685. Claimant subsequently claimed benefits for the weeks of March 15, 2026 through May 23, 2026 (weeks 11-26 through 20-26) and May 31, 2026 through July 18, 2026 (weeks 22-26 through 28-26).[2] These are the weeks at issue. The Department paid claimant a total of $11,645 for all of the weeks at issue.

[2] EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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 facts will remain in the record.

CONCLUSIONS AND REASONS: Order No. 26-UI-337715 is set aside and this matter remanded for further development of the record.

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) (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).

The employer discharged claimant because they felt that she had failed to meet the terms of the PIP by adhering to her clients' treatment plans and standards of care, and related concerns such as documentation. The order under review concluded that this did not constitute misconduct, as "[c]laimant's testimony that she thought she had been complying with the treatment plans established that she was not violating the employer's policies willfully or with wanton negligence." Order No. 26-UI-337715 at 4. The record as developed does not support this conclusion.

It is clear from the record that the employer long felt that claimant had been failing to meet their expectations regarding client care, primarily relating to how frequently claimant contacted or met with her clients, or documented these contacts or visits. The record likewise shows that claimant felt that she *had* been meeting these expectations. However, it is not possible to determine from the record as developed what, in objective terms, these expectations consisted of. Likewise, it is therefore not possible to determine whether claimant had reason to believe that she was meeting those expectations, or even if she had reason to understand what the employer expected of her with any specificity.

The final incident relating to the above concerns was, apparently, claimant's failure to provide the employer with clarification regarding "gaps in care" relating to a requested case review that claimant had provided on February 11, 2026. Thus, on remand, the ALJ should first inquire as to the specifics of what was requested, what claimant provided, how the employer felt claimant's response was insufficient, and what reason, if any, claimant had for believing that her responses (and the work she had done underlying those responses) was sufficient. To properly develop the record on these points, the ALJ is advised to elicit testimony that explains these points in clear, unambiguous language that can be readily understood by laypersons who do not work in the employer's field. The ALJ is similarly advised that specificity is crucial to proper development of the record on remand. For instance, clarity should be obtained as to what concrete, measurable steps claimant was expected to take in each relevant encounter relating to the February 11, 2026 case review, what language the employer used (verbally or in writing)

to explain these steps, what claimant understood the employer's explanations to mean, what steps she took, and why, if claimant's actions did not comport with the employer's expectations in any particular aspect, claimant failed to meet those expectations by her actions or lack thereof.

Further clarification is likewise appropriate to show, for instance, what specific gaps in care were identified by the manager in response to claimant's February 11, 2026 case review, which gaps in care, if any, claimant identified in the review or her subsequent clarification to her manager, claimant's explanation for each discrepancy between her manager's assessments and her own, and whether it was merely the manager-identified gaps in care, or claimant's failure to self-identify those gaps, which led to the employer's decision to discharge her.

Overpayment. A claimant who was overpaid benefits because of an error not caused by the claimant's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is later reversed by a decision finding the individual is not eligible for the benefits, must have the amount deducted from future benefits otherwise payable to them. An overpayment may only be deducted from any future benefits the claimant is eligible to receive within the five years after the decision concluding there was an overpayment becomes final. ORS 657.315(1)(a).

The order under review concluded that claimant was not overpaid benefits for the weeks at issue because claimant had not been discharged for misconduct, and therefore not disqualified from receiving benefits for those weeks. Order No. 26-UI-337715 at 5. As explained above, however, the record as developed is insufficient to determine whether claimant was discharged for misconduct. Therefore, a determination of whether claimant was overpaid benefits for the weeks at issue cannot yet be reached.

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, and whether claimant was overpaid benefits that she was required to repay to the Department, Order No. 26-UI-337715 is set aside and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-337715 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 22, 2026</u>

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-337715 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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