

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0839

Order No. 26-UI-336450 Affirmed – Disqualification
Order No. 26-UI-336452 Reversed – No Wage Credit Cancellation

PROCEDURAL HISTORY: On June 16, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective May 10, 2026 (decision # L0018216068).¹ Also on June 16, 2026, the Department served notice of an administrative decision concluding that credits from claimant's wages paid by the employer were subject to cancellation because he admitted to a Department representative to having committed theft or a felony in connection with work for which he was discharged (decision # L0018381166). Claimant filed a timely request for hearing on each decision. On July 7, 2026, and continuing on July 10 and 23, 2026, ALJ S. Lee conducted a consolidated hearing, and on August 3, 2026 issued Orders No. 26-UI-336450 and 26-UI-336452, affirming decisions # L0018216068 and L0018381166, respectively. On August 17, 2026, claimant filed applications for review of Orders No. 26-UI-336450 and 26-UI-336452 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 26-UI-336450 and 26-UI-336452 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2026-EAB-0839 and 2026-EAB-0840).

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

¹ Decision # L0018216068 stated that claimant was denied benefits from May 10, 2026 to June 27, 2026. However, decision # L0018216068 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 10, 2026, and until he earned four times his weekly benefit amount. See ORS 657.176.

ADOPTION OF HEARING ORDER: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with Order No. 26-UI-336450's findings of fact, reasoning, and conclusion that claimant was discharged for misconduct. Order No. 26-UI-336450 is **adopted**. See ORS 657.275(2). The rest of this decision addresses the cancellation of wage credit.

FINDINGS OF FACT: (1) Compass Commercial, Inc. employed claimant from November 18, 2025 through May 11, 2026. Claimant performed janitorial work at a large commercial building.

(2) In 2026, the employer used a phone app for timekeeping in which employees clocked in and out at the start and end of their shifts. Claimant's shifts were scheduled to begin at 7:00 a.m., but under an agreement reached regarding a disability accommodation request in March 2026, claimant was permitted to begin work as late as 7:30 a.m. at his discretion. However, claimant desired greater latitude in start times than this because he believed that his medical and mental health conditions prevented him from arriving at work by 7:30 a.m.

(3) In April 2026, claimant routinely clocked in for work using the phone app shortly after 7:00 a.m. but did not report to the worksite until much later in the morning, often several hours later. By May 2026, the employer learned through reviewing surveillance video that claimant had been doing this, and on May 11, 2026, discharged him for having falsely represented that he had been at work for several hours over the preceding two weeks. Later that day, claimant filed an additional claim for unemployment insurance benefits.

(4) On May 11, 2026, the Department sent a Notice of Claim Filed to the employer requesting separation information. On May 14, 2026, the employer filed a response reporting that claimant had been discharged due to theft of wages by falsely reporting clock-in times.

(5) After reviewing the employer's response, the Department sent claimant a questionnaire regarding the work separation. In claimant's written response, he admitted to regularly clocking in for work long before arriving at the worksite, and estimated that since January 2026 he had represented working 315 hours that he had not actually worked. However, in the response, claimant denied that this was "intentional time theft and falsification" and stated that it was "not a deliberate attempt to defraud the company" because he "wasn't intentionally falsifying time for personal gain." July 10, 2026 Transcript at 6. The response further explained that claimant viewed his actions as "attendance issues related to [his] disability" rather than an attempt to obtain unearned wages, and that his medical and mental health conditions made it "nearly impossible to accurately describe what happened[.]" July 10, 2026 Transcript at 6-7.

CONCLUSIONS AND REASONS: Claimant's wage credits are not subject to cancellation.

If the Department finds that a claimant was discharged for misconduct because of the commission of a felony or theft in connection with work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the employer notifies the Department of the discharge within 10 days after the notice of claim filed was issued or 30 days after the initial claim determination was issued, and:

- (a) The claimant has admitted commission of the felony or theft to the Department;

(b) The claimant has signed a written admission of the felony or theft and the written admission has been presented to the Department; or

(c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

ORS 657.176(3).

ORS 164.085 provides:

(1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind that the actor does not believe to be true [or]

(b) Fails to correct a false impression that the person previously created or confirmed[.]

* * *

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. * * *

* * *

In reviewing a conviction under ORS 164.085, the Court of Appeals held:

"Intent," when used with respect to conduct describing an offense, means "that a person acts with a conscious objective to cause the result or to engage in the conduct so described." ORS 161.085(7). The legislature did not define "defraud." When no statutory definition exists, we presume that the legislature intended terms to have their plain, natural, and ordinary meaning. [citation omitted]. The plain meaning of "defraud" suggests an act of misrepresentation. Common definitions of "defraud" are "to take or withhold from (one) some possession, right, or interest by calculated misstatement or perversion of truth, trickery, or other deception," *Webster's Third New Int'l Dictionary* 593 (unabridged ed 2002), or "[t]o cause injury or loss to (a person) by deceit." *Black's Law Dictionary* 488 (9th ed 2009). Both definitions require misrepresentation or deception by the person taking the property or causing injury. Thus, we conclude that, as used in ORS 164.085, "intent to defraud" means that a person acts with a conscious objective to take property from another person by deception.

State v. Reynolds, 246 Or App 152, 265 P3d 22 (2011).

The Department concluded that claimant was discharged for misconduct because of the commission of theft in connection with work. The employer notified the Department of the circumstances of the discharge within 10 days after the Notice of Claim Filed was issued. The record does not show that

claimant signed a written admission of theft that was in the Department's possession, or that claimant was convicted of theft in connection with this employment. The issue of wage credit cancellation therefore turns on whether claimant "has admitted commission of the. . . theft to the Department." Order No. 26-UI-336450 concluded that this requirement was satisfied by claimant's written admission "that he acted in a way that would be considered felony or theft[.]" Order No. 26-UI-336452 at 3. The record does not support this conclusion.

Although claimant admitted to the Department to having regularly clocked in for work long before his arrival at the worksite, acknowledging that this caused him to be paid for time he did not work, he denied to the Department that this constituted theft or fraud because he lacked the requisite criminal intent. Under the holding in *State v. Reynolds*, the crime of theft by deception requires "a conscious objective to take property from another person by deception." In his statement to the Department, claimant explained that his objective in deceiving the employer as to the times of his arrival at work was to preserve his employment by concealing his inability to arrive at work on time, rather than to "defraud" the employer of unearned pay or for "personal gain" in that regard. July 10, 2026 Transcript at 6. The record therefore fails to show that claimant admitted to the Department to having committed the alleged theft for which he was discharged, as he specifically denied to the Department that his actions constituted theft or fraud and asserted that taking unearned pay had not been his conscious objective. Accordingly, the record does not show that any of the three circumstances set forth in ORS 657.176(3), under which wage credit cancellation is permitted, had occurred.

For these reasons, credits from claimant's wages paid by the employer are not subject to cancellation under ORS 657.176(3).

DECISION: Order No. 26-UI-336450 is affirmed. Order No. 26-UI-336452 is set aside, as outlined above.

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

DATE of Service: October 2, 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.

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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 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

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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