EO: Intrastate
BYE: 14-Nov-2026

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

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EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0841

Late Application for Review Allowed
Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 23, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective August 17, 2025 (decision # L0014920974).[1] Claimant filed a timely request for hearing. On May 6, 2026, ALJ Laurie-Gardiner conducted a hearing, and on May 11, 2026 issued Order No. 26-UI-329881, reversing decision # L0014920974 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation. On June 1, 2026, Order No. 26-UI-329881 became final without the employer having filed an application for review with the Employment Appeals Board (EAB). On September 9, 2026, the employer filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the employer's written statement regarding the late application for review, which has been marked as EAB Exhibit 1 and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying 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 exhibit will remain in the record.

WRITTEN ARGUMENT: Both the employer's October 7, 2026 argument and claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond each party's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information

[1] Decision # L0014920974 stated that claimant was denied benefits from August 17, 2025 to November 21, 2026. However, decision # L0014920974 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 17, 2025 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

received into evidence at the hearing and EAB Exhibit 1. EAB considered any parts of claimant's and the employer's arguments that were based on the hearing record.

FINDINGS OF FACT: (1) Outlier Construction, LLC employed claimant as a general laborer, most recently from February 10, 2025 through September 1, 2025.

(2) In August 2025, claimant was assigned to work on a lead paint removal project in Klamath Falls, Oregon. The employer initially supplied claimant with an N-95 mask, but by August 21, 2025, claimant came to believe that it provided insufficient protection and that he had been inhaling paint particles. On August 21, 2025, claimant stated this concern to the employer and was offered a respirator mask in response, which claimant declined. Claimant was then either permitted or required to leave work prior to the end of his shift that day.

(3) On August 22, 2025, claimant sought to be tested for lead exposure at the employer's worker's compensation clinic and filed a claim in connection with that testing. Claimant eventually learned that the sample was positive for lead exposure, but at a level "under the threshold for OSHA[.]" Transcript at 6. Claimant told the employer that he was not comfortable returning to the Klamath Falls project due to his lead concerns, but that he was otherwise willing to perform work. The employer did not have other work to offer claimant but would have allowed him to return to work at the Klamath Falls project through August 31, 2025.

(4) On September 1, 2025, the employer hired a replacement for claimant at the Klamath Falls project and thereafter did not have any work to offer claimant. Claimant regularly checked with the employer for work through early December 2025.

(5) On December 5, 2025, the employer sent claimant a letter stating that they did not foresee any work becoming available for him. Claimant understood this to signify that the employment relationship had ended. The employer considered claimant to have quit in late August 2025 by declining to return to the Klamath Falls site, but had not sought to officially clarify the status of the employment relationship earlier due to the pending worker's compensation claim.

(6) Order No. 26-UI-329881, mailed to the employer's address on file on May 11, 2026, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 26-UI-329881 at 4. Order No. 26-UI-329881 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before June 1, 2026 to be timely." The employer did not receive Order No. 26-UI-329881 and was unaware that it had been issued until at least September 3, 2026.

(7) On September 3, 2026, the employer received correspondence from the Department reflecting that decision # L0014920974 had been reversed. Thereafter, the employer inquired about the correspondence and learned of Order No. 26-UI-329881's issuance.

(8) On September 9, 2026, the employer filed a late application for review of Order No. 26-UI-329881.

CONCLUSIONS AND REASONS: The employer's late application for review is allowed. Claimant was discharged, but not for misconduct.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ended. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 26-UI-329881 was due by June 1, 2026. The employer's application for review was filed on September 9, 2026, and was therefore late. The employer wrote that they did not receive Order No. 26-UI-329881 when it was mailed, and first learned about the order on September 3, 2026 in other correspondence from the Department. EAB Exhibit 1 at 1. While the reason for the employer's failure to receive Order No. 26-UI-329881 in the mail is unknown, it can reasonably be inferred that this was a factor beyond the employer's reasonable control that prevented them from filing a timely application for review. Good cause therefore exists to extend the filing deadline. Moreover, this factor did not end until at least September 3, 2026, when the employer learned of the existence of the order through other correspondence. Because they filed the late application for review on September 9, 2026, it was filed within a "reasonable time" thereafter. Accordingly, the employer's late application for review is allowed.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship. If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

The parties had differing views of the nature of the work separation, with the employer asserting that claimant voluntarily quit by declining to continue working on the Klamath Falls project, and claimant asserting that he was discharged due to lack of other work after he left that project. The employer's witness testified that they remained willing to allow claimant to return to the project until September 1, 2025, when they hired his replacement, and that after that date they "probably" would not have allowed claimant to return to work on that project if he expressed a willingness to do so. Transcript at 23-24. The witness explained that although they considered claimant to have voluntarily quit by refusing to return to that project, they delayed formalizing the separation due to the pending worker's compensation claim and because during that period they would have assigned claimant other work, if it was available. Transcript at 20. The parties agreed that claimant continuously expressed willingness to work on other projects through December 5, 2025, when the employer sent him a letter stating that they did not foresee offering him any more work.

Under these circumstances, the employment relationship ended on September 1, 2025, when the employer hired claimant's replacement on the Klamath Falls project and was no longer willing to employ claimant there if he were to change his mind about returning. Although the parties remained

willing for several additional months to *restart* claimant's employment if other work became available, this would have constituted a new employment relationship. Because the employer was unwilling to employ claimant at Klamath Falls after September 1, 2025 and had no other work available for him, while claimant was willing to perform other work and maintain the relationship until such work became available, the work separation was a discharge.

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). "'[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 employer discharged claimant because he had declined to return to work at the Klamath Falls site and the employer had no other work to offer him after he was replaced. Because the employer maintained at hearing that this was a voluntary leaving, it is somewhat unclear whether the employer believed that claimant was discharged for having violated an expectation of which he knew or should have known. On August 21, 2025, when claimant raised concerns about the safety equipment being insufficient, he was offered a respirator, which the employer viewed as "more than what was required. . . per OSHA and for our safety guidelines on that jobsite." Transcript at 18. According to the employer, claimant was then told "that if he wasn't comfortable he could pack up and go home," and he left his shift early, declining to return to the worksite thereafter.[2] Transcript at 18. Rather than immediately disciplining claimant, the employer told him that they remained willing to employ him on other projects as the need arose.

The employer's actions likely led claimant to believe that until September 1, 2025, they were giving him a choice of whether to remain on the Klamath Falls project or await a different work assignment, rather than giving him a clear directive to continue reporting for that project. As such, the record fails to show that, by not returning to the Klamath Falls project, claimant violated an employer expectation of which he knew or should have known. The employer's decision to replace claimant on the project at a time they had no other work available for him effectively ended the employment relationship, as discussed above. Similarly, this decision did not involve claimant willfully or with wanton negligence violating a policy or expectation that had been communicated to him. Accordingly, the employer has not shown that claimant's discharge was for misconduct.

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

[2] Claimant partially disputed this, testifying that he was directed to leave for the day despite wanting to work through the end of his shift. Transcript at 29.

DECISION: The employer's late application for review is allowed. Order No. 26-UI-329881 is affirmed.

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

DATE of Service: October 28, 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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