EO: Intrastate
BYE: 12-Jun-2027

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

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DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0846

Modified ~ Modificada
Disqualification ~ Descalificación

Este documento incluye información importante que no ha sido traducida al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-378-2077 para obtener servicios de traducción gratuitos.[1]

PROCEDURAL HISTORY: On August 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for a disqualifying act under the Department's drug, alcohol, and cannabis adjudication policy, and therefore was disqualified from receiving unemployment insurance benefits effective June 14, 2026 (decision # L0019164341).[2] Claimant filed a timely request for hearing. On August 31, 2026, ALJ Murray conducted a hearing that was interpreted in Spanish. The employer failed to appear at the hearing. On September 1, 2026, ALJ Murray issued Order No. 26-UI-338883, affirming decision # L0019164341. On September 9, 2026, claimant filed an application for review of Order No. 26-UI-338883 with the Employment Appeals Board (EAB).

HISTORIA DEL PROCEDIMIENTO DEL CASO: *El 6 de agosto de 2026, el Departamento de Empleo de Oregón (el Departamento) notificó una decisión administrativa concluyendo que el reclamante fue despedido por un acto que lo descalifica según la política de adjudicación de drogas, alcohol y cannabis del Departamento, por lo que quedó descalificado para recibir beneficios de seguro de desempleo a partir del 14 de junio de 2026 (decisión # L0019164341). El reclamante presentó a tiempo una solicitud de audiencia. El 31 de agosto de 2026, la jueza administrativa (ALJ) Murray llevó a cabo una audiencia que fue interpretada al español. El empleador no se presentó a la audiencia. El 1*

[1] This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-378-2077 to obtain free translation services.

[2] Decision # L0019164341 stated that claimant was denied benefits from June 14, 2026 to June 12, 2027. However, because decision # L0019164341 found that claimant was discharged on June 15, 2026, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 14, 2026 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

de septiembre de 2026, la ALJ Murray emitió la Orden No. 26-UI-338883, confirmando la decisión # L0019164341. El 9 de septiembre de 2026, el reclamante presentó una solicitud de revisión de la Orden No. 26-UI-338883 ante la Junta de Apelaciones de Empleo (EAB).

WRITTEN ARGUMENT: Claimant did not state that he provided a copy of his argument to the employer 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 claimant's reasonable control prevented him 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).

ARGUMENTO ESCRITO: *El reclamante no indicó que hubiera proporcionado una copia de su argumento al empleador como lo requiere Regla Administrativa de Oregon (OAR) 471-041-0080(2)(a) (13 de mayo de 2019). El argumento también contenía información que no formaba parte del registro de la audiencia y no mostró que factores o circunstancias fuera del control razonable del reclamante le impidieran ofrecer la información durante la audiencia, como lo requiere Regla Administrativa de Oregon (OAR) 471-041-0090 (13 de mayo de 2019). La EAB consideró únicamente la información que se presentó como evidencia en la audiencia. Ver ORS 657.275(2).*

FINDINGS OF FACT: (1) Interstate Concrete and Asphalt Company employed claimant as a driver from August 2024 through June 12, 2026.

(2) The employer maintained a written drug and alcohol policy which, in relevant part, permitted the employer to randomly test employees for drugs and alcohol, and to discharge employees who failed such a test. The employer provided claimant with a copy of this policy, and claimant understood it.

(3) On June 6, 2026, claimant used cocaine.

(4) On June 9, 2026, the employer notified claimant that he had been randomly selected for a drug test. Claimant complied with the test procedures and provided a sample. Claimant was not required to pay for any portion of the testing.

(5) On June 12, 2026, claimant's manager informed him that claimant had tested positive for cocaine and that, as a result, he had been discharged.

(6) In July 2026, claimant began a substance-abuse program, which he completed in August 2026.

CONCLUSIONS AND REASONS: Claimant was discharged for a disqualifying act and is disqualified from receiving unemployment insurance benefits effective June 7, 2026.

CONCLUSIONES Y RAZONES: *El reclamante fue despedido por un acto que lo descalifica y está descalificado para recibir beneficios de seguro de desempleo a partir del 7 de junio de 2026.*

A claimant is disqualified from receiving benefits if they have committed a disqualifying act as described in ORS 657.176(8) or (9). ORS 657.176(2)(h). Under ORS 657.176(8)(a), a claimant has committed a disqualifying act if claimant:

> (A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, cannabis or alcohol in the workplace;
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> * * *
>
> (D) Is under the influence of intoxicants while performing services for the employer; [or]
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> * * *
>
> (F) Tests positive for alcohol, cannabis or an unlawful drug in connection with employment[.]

Under ORS 657.176(8)(b)(A), except as provided in subparagraph (B) of this paragraph, an individual is not considered to have committed a disqualifying act under this subsection if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug, cannabis or alcohol rehabilitation program and provides documentation of participation in the program to the department.

OAR 471-030-0125[3] (January 11, 2018) states:

* * *

(2) Definitions. For the purposes of this rule:

> * * *
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> (c) For purposes of ORS 657.176(9) and 657.176(13), an individual is "under the influence" of intoxicants if, at the time of a test administered in accordance with the provisions of an employer's reasonable written policy or collective bargaining agreement, the individual has any detectable level of drugs, cannabis, or alcohol present in the individual's system, unless the employer otherwise specifies particular levels of drugs, cannabis, or alcohol in its policy or collective bargaining agreement.
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> * * *
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> (e) For purposes of ORS 657.176(9), an individual "tests positive" for alcohol, cannabis, or an unlawful drug when the test is administered in accordance with the provisions of an employer's reasonable written policy or collective bargaining agreement, and at the time of the test:

[3] The citations in this rule to ORS 657.176(9), (10), and (13) have not yet been updated to account for recent legislative changes which renumbered certain paragraphs under ORS 657.176. Therefore, any reference under the rule to ORS 657.176(9), (10), or (13) should be read as ORS 657.176(8), (9), or (12), respectively.

(A) The amount of drugs, cannabis, or alcohol determined to be present in the individual's system equals or exceeds the amount prescribed by such policy or agreement; or

(B) The individual has any detectable level of drugs, cannabis, or alcohol present in the individual's system if the policy or agreement does not specify a cut off level.

(f) An individual fails a test for alcohol, cannabis, or unlawful drugs when the individual tests positive as described in subsection (e) of this section.

(g) For purposes of ORS 657.176(9) and 657.176(13), "unlawful drug" means a drug which is unlawful for the individual to use, possess, or distribute under Oregon law. This term does not include a drug prescribed and taken by the individual under the supervision of a licensed health care professional and used in accordance with the prescribed directions for consumption, or other uses authorized by law.

* * *

(i) For purposes of ORS 657.176(9):

(A) "Recognized drug, cannabis, or alcohol rehabilitation program" means a program authorized and licensed by the State of Oregon, or another state.

(B) "Documentation of participation in the program" means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program.

(C) "Participation" means to be engaged in a course of treatment through a recognized drug, cannabis, or alcohol rehabilitation program.

(3) For purposes of ORS 657.176(9), (10), and 657.176(13), a written employer policy is reasonable if:

(a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and

(b) The policy does not require the employee to pay for any portion of the test; and

(c) The policy has been published and communicated to the individual or provided to the individual in writing; and

(d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:

(A) Probable cause for requiring the individual to submit to the test; or

(B) The policy provides for random, blanket or periodic testing.

* * *

(5) Random, blanket and periodic testing. For purposes of ORS 657.176(9) and (10):

> (a) A "random test for drugs, cannabis, or alcohol, or a combination thereof" means a test for drugs, cannabis, or alcohol, or a combination thereof given to a sample drawn from a population in which each member of the population has an equal chance to be selected for testing.
>
> * * *

(6) For purposes of ORS 657.176(9), (10), and (13), no employer policy is reasonable if the employer does not follow their own policy.

* * *

OAR 471-030-0126 (January 11, 2018) provides:

(1) "Drug" has the meaning given in ORS 475.005(6);

(2) "Documentation of program participation" means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program;

(3) "Participation" means to be engaged in a course of treatment through a recognized drug, cannabis, or alcohol rehabilitation program;

(4) "Recognized drug, cannabis, or alcohol rehabilitation program" means a program authorized and licensed by the State of Oregon, or authorized and licensed by another state.

The employer discharged claimant because claimant tested positive for cocaine after being chosen for a random drug test. The employer's policy was written, provided for random testing, and had been provided to claimant. The employer did not require claimant to pay for any portion of the test. It can be reasonably inferred from the record that the policy prohibited the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace because the employer discharged claimant after he tested positive for cocaine. The record contains no indication that the employer failed to follow any provision of its own policy. As such, the policy was, more likely than not, reasonable.

Because claimant tested positive for cocaine, claimant committed a disqualifying act under both ORS 657.176(8)(a)(D) and (F). The record shows that claimant entered a treatment program after he was discharged. However, for the exception under ORS 657.176(8)(b)(A) to apply, claimant must have been participating in the program at the time of his work separation, or within 10 days after the date on which he separated from work. Claimant was discharged on June 12, 2026, but did not start the program until July 2026, and therefore could not have been participating in the program within 10 days of discharge. Additionally, claimant must have shown that he provided documentation of his participation in the program to the Department, and that the program was a "recognized" program. A "recognized" program is one that was authorized and licensed by the State of Oregon or another state. Claimant did not show either that he provided such documentation to the Department, or that the program was authorized by the

State of Oregon or another state. For these reasons, claimant's participation in the program does not qualify him for the exception under ORS 657.176(8)(b)(A).

It should be noted that the order under review concluded that claimant was disqualified from receiving benefits effective June 14, 2026. Order No. 26-UI-338883 at 6. However, the record shows that claimant was actually discharged on June 12, 2026. At hearing, claimant testified that he learned of the positive test result on Friday, June 12, 2026, and that his manager told him that day not to come to work on the following Monday because he was being discharged. Transcript at 6. As such, June 12, 2026 is the correct date on which claimant was discharged. Therefore, because claimant was discharged on June 12, 2026 for a disqualifying act, claimant is disqualified from receiving unemployment insurance benefits effective June 7, 2026.

DECISION: Order No. 26-UI-338883 is modified, as outlined above.

DECISIÓN: *La Orden de la Audiencia 26-UI-338883 se modifica, de acuerdo a lo indicado arriba.*

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

DATE of Service: October 26, 2026

FECHA del servicio: 26 de octubre de 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

NOTA: *Puede apelar esta decisión presentando una Petición de Revisión Judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals)* ***dentro de los 30 días siguientes a la fecha de entrega de esta decisión indicada arriba****. Vea ORS 657.282. Para obtener formularios e información, visite* https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx *y elija el formulario para "Junta de Apelaciones Laborales". En este sitio web, hay información disponible en español. Puede solicitar un intérprete para la Corte en* https://web.courts.oregon.gov/osca/clas/CLASRequestFormRedirect.html *También puede comunicarse con la Corte de Apelaciones por teléfono al (503) 986-5555, por fax al (503) 986-5560 o por correo a 1163 State Street, Salem, Oregon 97301.*

Por favor, ayúdenos a mejorar nuestro servicio completando una encuesta de servicio al cliente*. Para completar la encuesta en línea, vaya a* https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey*. Si no puede completar la encuesta en línea y desea obtener una copia impresa de la encuesta, comuníquese con nuestra oficina.*

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

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