EO: Intrastate
BYE: 19-Jun-2027

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

744
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0848

Reversed
No Disqualification

PROCEDURAL HISTORY: On August 12, 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 beginning May 31, 2026 (decision # L0019098766). Claimant filed a timely request for hearing. On September 1, 2026, ALJ Naylor conducted a hearing, and on September 2, 2026 issued Order No. 26-UI-339040, affirming decision # L0019098766. On September 9, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of employer's argument that were based on the hearing record. EAB did not consider claimant's October 14, 2026 argument because it was not received by EAB within the time allowed under OAR 471-041-0080(1) (May 13, 2019). OAR 471-041-0080(2)(b). EAB considered claimant's September 9, 2026 argument in reaching this decision.

FINDINGS OF FACT: (1) Wright Business Graphics, LLC employed claimant as a press operator from June 3, 2024 through June 5, 2026.

(2) Claimant's shift was scheduled to officially begin at 5:00 a.m., but in practice, claimant clocked in for work at approximately 4:30 a.m. to turn on and begin a warm-up process of several machines and perform other tasks to prepare for the day's work. At 5:00 a.m., claimant would turn on and begin the warm-up process of his assigned machine, which generally took 45 to 60 minutes before it could be used. In addition to clocking in and out at the beginning and end of shifts, the employer required press operators to complete a time log of their daily production activities using codes. For example, code 201 was to be used to document time spent on "[c]old startup, beginning of shift startup, [or] end of shift shutdown." Exhibit 2 at 11.

(3) The employer had a written policy prohibiting phone use during work hours for "visual entertainment purposes." Exhibit 2 at 3. Claimant acknowledged receipt of this policy on May 23, 2025.

(4) On August 12, 2025, claimant was issued a written warning that stated the reason for its issuance as: "Continued start of shift time clock entry excessively early before start of shift. Shift currently starts at 5:00 am Monday – Friday. Should not be punched in prior to approximately 4:50 a.m."[1] Exhibit 2 at 1. At the time the warning was issued, the production manager explained to claimant that the actual issue motivating the warning was a safety concern, in that claimant's assigned machine should not be started when he was alone in the shop, and the only other worker who had typically been present with claimant prior to 5:00 a.m. had been on vacation for a few days, leaving claimant to start the machines alone. Claimant therefore believed that the warning's directive to clock in no earlier than 4:50 a.m. applied only while this worker was on vacation, and that claimant should resume his usual schedule, beginning at 4:30 a.m., when the vacation ended. Claimant resumed that schedule in August 2025 and maintained it through early June 2026 without being notified of any objection by the employer. However, the employer continued to expect that claimant would clock in no earlier than 4:50 a.m.

(5) By early June 2026, the employer had received reports from other employees that they had regularly observed claimant not performing any work tasks between 5:00 a.m. and 6:30 a.m., and that he was using his phone during that time. To investigate, the production manager went to the shop on June 4, 2026 and observed claimant from 5:00 a.m. to 5:45 a.m., during which time claimant remained seated. Claimant's timecard for the week was reviewed, and showed that he had clocked in each day at approximately 4:30 a.m., and the first entry of each production log for those days listed code 201 from 5:00 a.m. to 6:00 a.m.

(6) Based on the foregoing, the employer believed that claimant had been clocking in for work earlier than authorized and that he was not performing work tasks during the first part of each workday from at least June 1 through June 4, 2026. On June 5, 2026, the employer discharged claimant for this reason.

CONCLUSIONS AND REASONS: Claimant was discharged, but not 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).

[1] Although the warning was issued in writing and signed by claimant, it stated that it was considered an "[o]ral warning," apparently the first step in a progressive disciplinary process. Exhibit 2 at 1.

The employer discharged claimant because they believed that he was clocking in for work earlier than authorized and that he was not performing work tasks in the first part of the mornings. It is reasonable for an employer to expect an employee to clock in at a specified time and to immediately and continuously perform work tasks thereafter. The employer considered claimant's earliest authorized clock-in time to be 4:50 a.m., while claimant believed he was allowed to clock in at approximately 4:30 a.m. The parties disputed whether claimant continuously performed work tasks from 4:30 to 6:30 a.m. each day.

The order under review concluded that the weight of the evidence supported the employer's assertion that claimant was aware in June 2026 that he was expected to clock in for work no earlier than 4:50 a.m., and that his regularly clocking in at approximately 4:30 a.m. each day was at least a wantonly negligent violation of that expectation. Order No. 26-UI-339040 at 4-5. The record does not support this conclusion.

The primary evidence in support of the employer's assertion that claimant knew or should have known of their expectation that he clock in no earlier than 4:50 a.m. was the August 12, 2025 warning stating this expectation, and the production logs from June 1 through 4, 2026, each listing claimant's first activity of the day, code 201, as beginning at 5:00 a.m. In rebuttal, claimant testified that his shifts started at 4:30 a.m. because he had been "given an okay to work early" by the production manager at the time he received the warning. Transcript at 14. Claimant explained that he was told the basis for the warning was "a potential safety violation for working without another coworker, as you can't run the press without another coworker present," and was told, "But as long as there's another coworker, that I was okay to keep clocking in[.]" Transcript at 15. Claimant testified that he had been unaware that the coworker was absent until receiving the warning on the third day of the coworker's vacation. Transcript at 15-16. In rebuttal to that testimony, the employer's witness, who worked in human resources and payroll, testified that she would have been privy to any special authorization or change to claimant's schedule, but was never notified of such. Transcript at 21.

Regarding the production log, claimant testified that 5:00 a.m. was "when [he] start[ed] production operations, not [his] clock-in time," apparently suggesting that this was why it was the first entry of the day, and explained that between 4:30 a.m. and 5:00 a.m. his duties were to "turn on all the lights, power up the shop, turn on [various machines]. . . and get everything started and warmed up and ready for when people walk in a couple minutes after." Transcript at 16-17. Claimant testified that the video in evidence depicted him continuously performing these and other administrative tasks, suggesting that it corroborated his testimony regarding how he spent the time. Transcript at 17-18. In contrast, the employer's witness initially asserted that the video depicted claimant "on his phone" and sitting for long periods with "no work being done." Transcript at 7. However, the witness later conceded that what claimant was doing while seated "couldn't be seen by the video camera," and that her assertions had been based on reports of other employees that typically arrived at 5:00 a.m. and claimant's apparent distance from the press machines in the videos. Transcript at 11-12. In EAB's review of this evidence, due in part to the camera's limited perspective and the poor overall quality of the time-lapse video, it fails to depict claimant's activities with sufficient detail to disprove his testimony regarding how he spent the time in question.

In weighing the parties' contrasting accounts regarding what claimant knew or should have known his earliest authorized start time to be, claimant's first-hand testimony regarding what he was told by the

production manager at the time of the August 12, 2025 warning is entitled to greater weight than the hearsay evidence suggesting that claimant was only told precisely what was written in the warning. It is possible, and perhaps likely, that claimant misconstrued the production supervisor's explanation of the safety concern underlying the warning as giving him authorization to return to clocking in at 4:30 a.m., rather than 4:50 a.m., when the coworker returned from vacation and eliminated the concern of claimant starting the machines while alone. However, the employer's failure to notice or object to claimant clocking in at 4:30 a.m. for the nine months following the coworker's return from vacation reinforced claimant's belief that he was acting with the production supervisor's authorization. Claimant adequately explained his reason for not including his activities from 4:30 a.m. to 5:00 a.m. on the production log, and his exclusion of that information from the log fails to demonstrate consciousness that the employer disapproved of his 4:30 a.m. arrivals. Therefore, the record fails to show by a preponderance of the evidence that claimant's actions in clocking in at 4:30 a.m. were the result of wanton negligence, as he did not act with indifference to the consequences of his actions while he knew or should have known that his actions probably violated the employer's expectations. At most, claimant's misunderstanding of the production supervisor's explanation of the warning and clock-in time expectation going forward amounted to ordinary negligence.

Regarding the employer's assertions that claimant violated their expectations prohibiting phone use and requiring him to continuously perform work tasks for the entire time clocked in, claimant's testimony that he did not violate those expectations is entitled to greater weight than the written hearsay accounts offered by the employer, and, as discussed above, the employer's video evidence is insufficient to rebut claimant's testimony in that regard. Therefore, the employer failed to show by a preponderance of the evidence that claimant violated either expectation. Accordingly, the employer did not meet their burden of showing that claimant was discharged for misconduct.

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

DECISION: Order No. 26-UI-339040 is set aside, as outlined above.

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

DATE of Service: October 23, 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
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