EO: Intrastate
BYE: 19-Jun-2027

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

503
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0858

Affirmed
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 for misconduct, and therefore was disqualified from receiving unemployment insurance benefits effective June 7, 2026 (decision # L0019262795). Claimant filed a timely request for hearing. On September 1, 2026, ALJ Bender conducted a hearing, and on September 8, 2026 issued Order No. 26-UI-339358, reversing decision # L0019262795 by concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On September 11, 2026, the employer 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 the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Ed Staub & Sons Petroleum, Inc. employed claimant, most recently as a communication manager, from May 1, 2025 through June 18, 2026. Claimant was based in Springfield, Oregon, but frequently traveled around the state and to California to meet with clients.

(2) The employer maintained a policy regarding the usage of cell phones while driving. That policy stated, in relevant part, that while employees were permitted to use "Hands Free and Built-in devices" while driving, employees were "not allowed to touch [their] cell phone or other devices while driving or at an intersection waiting in traffic." Exhibit 1 at 2. The employer provided claimant with a copy of this policy before he was hired, for which claimant signed an acknowledgment of receipt.

(3) On June 17, 2026, claimant drove to Klamath Falls, Oregon to meet with a client. As was typical for him, claimant was navigating using GPS via his phone, which was connected to the vehicle's electronics. Because the phone was connected to the vehicle, claimant was following the GPS

instructions on the vehicle's screen, and was not actively using or looking at his phone. The phone itself was placed in a cup holder.

(4) While en route, claimant stopped at an intersection. As he came to a stop, his phone slipped out of the cup holder, so claimant picked the phone up and held it in his hand while stopped at the intersection. At roughly the same time, claimant was trying to determine whether to proceed straight through the intersection, as he had planned, or to instead turn left as the GPS indicated. Additionally, a vehicle behind claimant was honking at him while he was stopped. After looking to his right, claimant decided to turn left at the intersection. Claimant took his foot off of the brake and moved forward slowly into the intersection, about "a mile or two per hour[.]" Transcript at 12. After moving a short distance, claimant realized that there was a pedestrian in the crosswalk, directly in front of his vehicle. Claimant had not previously noticed her because it was difficult to see her due to her short stature and the height of his vehicle. Claimant "slammed [on] the brake," but was unable to avoid hitting the pedestrian. Transcript at 12. Claimant was holding his phone in his hand, but not using it, during this series of events, which "happened very fast." Transcript at 12.

(5) After hitting the pedestrian, claimant, although shaken, got out of his vehicle and helped the pedestrian to her feet. Law enforcement eventually arrived on the scene, and claimant was charged with careless driving.[1] Claimant reported the accident to the employer.

(6) The employer subsequently viewed footage from the dashboard camera in claimant's vehicle, and determined that claimant had been holding his phone when the accident occurred. As a result, on June 18, 2026, the employer discharged claimant because he had violated their cell phone use policy.

(7) Prior to being discharged, the employer had not disciplined claimant for any other violations of their policies. Prior to the accident on June 17, 2026 and subsequent citation, claimant had a "clean" driving record. Transcript at 15.

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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern

[1] *See* ORS 811.135.

of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, acts that violate the law, that are tantamount to unlawful conduct, or that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

ORS 811.507(2) states:

A person commits the offense of driving a motor vehicle while using a mobile electronic device if the person, while driving a motor vehicle on a highway or premises open to the public:

(a) Holds a mobile electronic device in the person's hand; or

(b) Uses a mobile electronic device for any purpose.

The employer discharged claimant because he had violated their cell phone use policy during his collision with a pedestrian on June 17, 2026. In particular, the policy included a provision that employees were "not allowed to touch [their] cell phone or other devices while driving or at an intersection waiting in traffic." As claimant was holding his phone in his hand during the accident, while at an intersection, he violated the policy. Additionally, even though claimant was not actually *using* the phone at the time—he had merely picked it up because it slipped out of the cupholder in which it had been sitting—he nevertheless violated ORS 811.507(2) because he was driving a motor vehicle while he was holding it.[2]

It should be noted that the fact that claimant was holding his phone when the accident occurred does not appear to be a cause of the accident itself. Instead, the record suggests that the accident was the result of several other factors: claimant's confusion over the GPS instructions, a car behind him honking, the height of his vehicle, and the short stature of the pedestrian. Additionally, the employer's witness specifically testified at hearing that they discharged claimant due to his violation of the cell phone policy. Transcript at 5–6. Thus, the record shows that the proximate cause of the discharge was the policy violation itself and that the accident was not the result of that violation.[3]

It should be further noted that while claimant's policy violation also violated ORS 811.507(2)(a), a violation of the law is not automatically considered misconduct under ORS 657.176. In this context, the fact that the conduct violated the law is only relevant if the conduct was also a willful or wantonly negligent violation of the employer's standards of behavior. This is because while a willful or wantonly negligent violation can in some circumstances be considered an isolated instance of poor judgment, which is an exception to misconduct, acts that violate the law or are tantamount to unlawful conduct are *not* considered isolated instances of poor judgment. To even reach that question, however, the record

[2] "Driving" means operating a motor vehicle on a highway or premises open to the public, and while temporarily stationary because of traffic, a traffic control device or other momentary delays. ORS 811.507(1)(a)(A).

[3] *See e.g. Appeals Board Decision* 12-AB-0434, March 16, 2012 (discharge analysis focuses on proximate cause of the discharge, which is generally the last incident of misconduct before the discharge); *Appeals Board Decision* 09-AB-1767, June 29, 2009 (discharge analysis focuses on proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did).

must first show that the conduct was a willful or wantonly negligent violation. In this case, the employer has not met their burden to show that it was.

The record shows that claimant's phone had been sitting in a cupholder, but slipped out of it when he stopped at the intersection where the accident took place, and that it came to be in claimant's hand because he picked it up after he stopped. The record does not clearly show how long claimant held the phone in his hand after he picked it up. At the time he stopped at the intersection, though, claimant was immediately concerned with figuring out which direction to go to reach his destination. Shortly thereafter, claimant's focus was trained on the pedestrian whom he had hit in the crosswalk. Additionally, claimant described the above series of events as having "happened very fast."

From the above, it can be reasonably inferred that claimant had quickly grabbed the phone after it fell, and continued to hold the phone while the above series of events occurred because he was focused on more pressing matters and did not stop to consider that his phone was still in his hand. As such, claimant did not act without regard for the consequences of his actions in continuing to hold his phone over the short period of time that followed his having picked it up. Therefore, claimant's conduct which violated the employer's policy was, at worst, ordinary negligence, and did not rise to the level of wanton negligence.

Because the conduct for which claimant was discharged was not a willful or wantonly negligent violation of the employer's standards of behavior, claimant was discharged, but not for misconduct, and therefore is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-339358 is affirmed.

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

DATE of Service: October 29, 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.

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*
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