EO: Intrastate
BYE: 03-Jul-2027

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

684
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0887

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 20, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving unemployment insurance benefits from June 28, 2026 to July 3, 2027 (decision # L0019435992). Claimant filed a timely request for hearing. On September 11, 2026, ALJ Krueger conducted a hearing, and on September 16, 2026 issued Order No. 26-UI-339910, modifying decision # L0019435992 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective June 28, 2026, and until requalified. On September 20, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Krause Foods, LLC employed claimant as a cashier and server at their restaurant, most recently from September 2025 through July 1, 2026. Claimant had previously worked for the employer, was discharged, and rehired pursuant to a settlement agreement between the employer and the National Labor Relations Board (NLRB).

(2) The employer had a written discipline and discharge policy that prohibited insubordination and "[p]roviding knowingly inaccurate. . . or misleading information when speaking on behalf of [the employer.]" Exhibit 3 at 6. The policy also stated, "The principles of progressive discipline shall be used except when the nature of the problem requires more serious action, such as violence and sexual harassment," and that the "normal disciplinary progression will be verbal warning, written warning, suspension and/or final written warning, and termination." Exhibit 3 at 5. Claimant was represented by a union, and while the union had not reached a comprehensive collective bargaining agreement with the employer as of July 1, 2026, the union and employer had agreed that the discipline and discharge policy would be followed.

(3) By May 2026, the employer suspected claimant of recent potential policy violations involving him having allegedly made disparaging and untrue statements about the employer to customers that caused them to leave the business prior to making a purchase, and disabling the employer's online order system

without authorization to prevent customers from placing orders. The employer asked to discuss the allegations with claimant as part of the investigatory process, and at claimant's request, an in-person meeting was conducted for this purpose.

(4) On June 22, 2026, the employer sent claimant an email stating that they had concluded their investigation into the potential policy violations and requested that claimant attend a meeting to discuss the results. The employer intended to issue claimant a final written warning at the meeting, and due to the gravity of the alleged violations, wanted to transmit it to him in person. The email requested that claimant propose a time for the meeting and invited him to have "whoever you would like to have" present for the meeting. Exhibit 3 at 2. The parties thereafter exchanged emails in which claimant refused to attend any meeting on the subject and requested that the employer transmit the results of the investigation in writing.

(5) On June 23, 2026, the employer stated in an email that the meeting was scheduled for July 3, 2026, at 3:00 p.m., at the restaurant, and that it was for the purpose of "taking disciplinary action" and "discuss[ing] expectations moving forward," as claimant was "not being terminated." Exhibit 3 at 3. The email also stated, "If you continue to refuse to meet with management, that will constitute insubordination and we will take appropriate disciplinary action." Exhibit 3 at 3. Claimant replied to the email that he would not attend the meeting because he did not "feel safe or comfortable," and because he was "not required to meet with [management]." Exhibit 3 at 3. By this, claimant meant that he felt that he was not safe from being discharged or otherwise retaliated against for union advocacy, not that he was in fear of physical harm by attending the meeting. In response, the employer reiterated their expectation regarding the July 3, 2026 meeting. On June 25, 2026, claimant again replied that he would not be attending the meeting, and wrote, "If you continue to attempt to pressure me, I will refer to my previous response." Exhibit 3 at 4.

(6) On July 1, 2026, the employer discharged claimant for his continued refusal to agree to attend the July 3, 2026 meeting. The employer sent claimant written notice of his discharge citing that reason. *See* Exhibit 3 at 12.

CONCLUSIONS AND REASONS: Claimant was discharged 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). A conscious decision not to comply with an unreasonable employer policy is not misconduct. OAR 471-030-0038(3)(d)(C).

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 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).

The employer discharged claimant for his ongoing refusal to attend a meeting regarding the results of an investigation into allegations of prior policy violations.[1] The employer had a written policy prohibiting insubordination, and claimant was aware of that policy. The record shows that the employer notified claimant by email on four occasions between June 22 and 25, 2026 of their directive that he attend the meeting. Exhibit 3 at 2-4. Claimant did not dispute at hearing that in reply to each email, he refused to attend the meeting. The record therefore shows that claimant willfully violated the employer's policy against insubordination. However, claimant asserted that the employer's expectation that he attend the meeting was unreasonable, and under OAR 471-030-0038(3)(d)(C), a conscious decision not to comply with an unreasonable employer policy is not misconduct.

The primary basis for claimant's assertion that the employer's directive to attend the meeting was unreasonable was his belief that the meeting constituted a departure from the "normal disciplinary progression" set forth in the written discipline and discharge policy, that the employer intended to depart from that progression by imposing discipline more severe than a verbal warning, and that the employer lacked the authority to depart from that progression based on the nature of the alleged policy violations under investigation. However, the record fails to show that the employer acted unreasonably, or in violation of the agreement with the union to follow the discipline and discharge policy, in requiring claimant to attend the meeting.

In that policy, the employer reserved the right to impose discipline outside of the "normal" disciplinary progression "when the nature of the problem requires more serious action[.]" Exhibit 3 at 5. Although the policy gave two examples of such situations, it did not state that the list of examples was exhaustive, and the employer therefore retained the right to determine what conduct was serious enough to justify a departure from the "normal" disciplinary progression on a case-by-case basis. The employer's decision to issue claimant a final written warning at the meeting therefore did not render unreasonable the directive that claimant attend the meeting. Moreover, the record fails to show that the policy prohibited the employer from requiring an employee, in connection with being issued a written final warning, to receive the warning in person and to discuss the employer's expectations to reform their conduct. Such a requirement would reasonably fall within the bounds of an employer-employee relationship.

[1] The record shows that, more likely than not, the decision to discharge claimant was made without regard to the underlying prior alleged policy violations, and they were therefore not part of the proximate cause of claimant's discharge. *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).

Claimant's other asserted reason for refusing to attend the meeting, that he felt unsafe, was explained at hearing to mean that he feared retaliation for his union advocacy, and not that he feared for his physical safety by attending the meeting. Transcript at 27-28. As such, the type of fear asserted by claimant did not render unreasonable the employer's expectation that he attend the meeting. Moreover, it is unclear how refusing to attend the meeting would have prevented the employer from taking disciplinary action against claimant that he would have perceived as retaliation, since discipline for the alleged prior violations appeared inevitable at the time the employer concluded their investigation. For these reasons, the employer's expectation that claimant attend the meeting was reasonable, and claimant's conscious refusal to comply cannot be excused under OAR 471-030-0038(3)(d)(C).

Despite claimant's willful violation of the employer's insubordination policy, isolated instances of poor judgment are not misconduct. However, claimant's conduct was not "isolated," as it was not a single or infrequent occurrence, but was instead a repeated and ongoing refusal to comply with a reasonable directive essential to the employment relationship. Accordingly, claimant's actions cannot be excused as an isolated instance of poor judgment, and he therefore was discharged for misconduct.

For these reasons, claimant was discharged for misconduct and is disqualified from receiving unemployment insurance benefits effective June 28, 2026.

DECISION: Order No. 26-UI-339910 is affirmed.

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

DATE of Service: November 5, 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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