

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0439**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant committed a disqualifying act and was ineligible for benefits (decision # 144224). Claimant filed a timely request for hearing. On April 18, 2018, ALJ S. Lee conducted a hearing, and on April 20, 2018, issued Order No. 18-UI-107879, affirming the Department's decision. On April 28, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument, to the extent it was based on the record, when reaching this decision.

**FINDINGS OF FACT:** (1) Seattle Ace employed claimant as a sales associate from October 28, 2010 to February 26, 2018.

(2) The employer had a written drug and alcohol policy that prohibited the use and effects of drugs, cannabis and alcohol in the workplace. The employer published its policy and communicated it to claimant at hire and periodically during his employment, at which times he acknowledged its communication to him in writing.

(3) The employer's policy provided for administration of a random test for drugs, cannabis and alcohol. Under the policy, each fiscal year, the employer submitted all of its employees' ID numbers to an outside drug laboratory that placed each employee ID number into a pool from which it randomly selected 10% of the employee population within a given region at one time for drug and alcohol testing. Under the employer's policy, each employee had an equal chance of being selected for a random test, the cost of which was to be borne by the employer.

(4) Claimant suffered from neuropathy in both legs and, on the advice of his physician, had begun using the cannabis compound, Cannabidiol (CBD), for the pain in his legs.

(5) On February 26, 2018, the employer notified claimant that he had been randomly selected for drug and alcohol testing under the employer's drug and alcohol policy. Claimant believed that he might test positive for THC with the random test because of his CBD usage. Claimant went home and discussed taking the test with his spouse, and after doing so, "just decided to quit" instead of taking the test, so informed the employer and resigned that day for that reason. Audio Record ~ 16:00 to 19:45.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant committed a disqualifying act, and is disqualified from receiving unemployment insurance benefits.

ORS 657.176(2)(h) requires a disqualification from unemployment insurance benefits if the individual committed a disqualifying act under ORS 657.176(10). ORS 657.176(10)(c) provides that an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work to avoid taking a drug, cannabis or alcohol test under a reasonable written policy that is consistent with ORS 657.176(9)(a)(A).

Claimant voluntarily left work on February 26, 2018 rather than take a random drug test that he was notified that he was required to take that same day. Claimant's act was disqualifying if the test was required under a reasonable written policy consistent with ORS 657.176(9)(a)(A). Under OAR 471-030-0125(3) and (6), a written employer policy is reasonable if it prohibits the use, sale, possession, or effects of drugs in the workplace, the employer follows its own policy, the policy has been published and communicated to the individual or provided to the individual in writing, the policy provides for random testing, and the employer pays for the cost of the drug test.

The employer's policy was written, and prohibited the use and effects of drugs, cannabis and alcohol in the workplace. The policy was published and communicated to claimant in writing. The policy provided for random testing, as defined at OAR 471-030-0125(5)(a), meaning that the test was given to a sample drawn from a population in which each member had an equal chance to be selected for testing. The employer bore the cost of the test. In selecting claimant for testing, and attempting to administer the test, the employer adhered to its own policy.

The test was reasonable under OAR 471-030-0125(3) and (6). Claimant's voluntary leaving to avoid taking the test was a disqualifying act under ORS 657.176(10). Claimant is therefore disqualified from receiving unemployment insurance benefits under ORS 657.176(2)(h).

**DECISION:** Order No. 18-UI-107879 is affirmed.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service:** May 31, 2018

**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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the

'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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