

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1167**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95156). Claimant filed a timely request for hearing. On November 30, 2018, ALJ S. Lee conducted a hearing, and on December 6, 2018 issued Order No. 18-UI-120774, reversing the Department's decision and concluding no disqualifying work separation occurred. On December 19, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Northwest Exterminators, Inc. employed claimant as a pest control operator from October 1, 2000 until August 27, 2018. Claimant provided general pest control for commercial and residential customers.

(2) Claimant normally left his weekly paperwork with the employer's owner on Fridays, and picked up the new paperwork for the following week on Tuesdays. Claimant had little direct contact with the employer's owner. On Tuesday, February 27, 2018, when claimant reported to work to pick up the paperwork for his route that week, the owner told claimant that he was approaching retirement and would like to "scale back on work and the stress." Audio Record at 28:05 to 28:07. The owner asked claimant if he was interested in purchasing the customer route that claimant had been doing at the end of August 2018. Claimant stated that he was interested. Claimant understood from the conversation that the owner would otherwise be eliminating claimant's position and customer route at the end of August 2018.

(3) During March through July 2018, the owner told claimant several steps he would need to complete before purchasing the route, including purchasing a computer, software and a truck, and obtaining a license for the business. The owner asked claimant occasionally if he had purchased or prepared the items the owner had recommended to claimant. Claimant replied each time that he had not done so. Claimant did not have financial resources to prepare to purchase part of the employer's business.

Claimant was also unsure if he would be able to continue working as a pesticide applicator because it caused him chronic pain and migraines due to a work-related injury from December 2017.

(4) On approximately August 10, 2018, the owner gave claimant a list of the customer names he proposed to sell to claimant for \$45,000. The owner also proposed that claimant purchase a truck from the employer for \$9,000. Claimant did not have the resources to make the purchases.

(5) On August 17, 2018, claimant left the owner a note stating that he was “ready to go” on September 1, 2018. Audio Record at 48:58.

(6) After August 17, 2018, claimant spoke with a friend about obtaining a loan to purchase the route, but understood from the person that it was unrealistic for him to apply for a loan because he had a recent bankruptcy. Claimant did not apply for a loan.

(7) On August 24, 2018, claimant left the owner a note that stated, “No go on loan. Thanks anyway. I assume I’m finishing August route. I’ll clean up the truck before I leave it next week. Mail my check and stub and anything else I’m owed.” Audio Record at 32:25 to 32:35. The owner received the note and understood that claimant was not able to purchase the route from the owner. Claimant had customers he planned to provide service for during the week of August 26, 2018.

(8) On August 27, 2018, claimant received a text message from the owner stating that he had read claimant’s note, and “[claimant] no longer needed to show up.” Audio Record at 10:33 to 10:37. Claimant sent the owner a text message asking about the customers who remained on his route for the week of August 26. The owner replied, “Don’t worry about it.” Claimant asked if he could recover his tools and belongings from the employer’s truck, and the owner replied, “No, I’ll just mail it to you.” Audio Record at 19:48 to 20:10. About two weeks later, claimant received a box of his belongings in the mail from the employer.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but not for misconduct.

**Work Separation.** Claimant asserted that he did not quit work with the employer, and that the employer planned to eliminate his position at the end of August 2018. Audio Record at 9:49 to 9:53, 11:48 to 12:41. The employer’s owner asserted that claimant quit with the note he gave the owner on August 24, 2018. Audio Record at 32:35 to 32:52. The ALJ did not determine the nature of the work separation. The work separation is, therefore, the first issue this case presents. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (January 11, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). “Work” means the continuing relationship between an employer and an employee. OAR 471-030-0038(1)(a). For a continuing employment relationship to exist there must be some future opportunity for the employee to perform services for the employer. *See Appeals Board Decision 97-AB-873*, June 5, 1997. No continuing relationship exists if the employer does not have an expectation that a service will be performed. *See Appeals Board Decision 02-AB-2040*, October 15, 2002.

Claimant testified that the employer's owner stated that he was eliminating claimant's position at the end of August 2018,<sup>1</sup> and the owner denied having made such declaration.<sup>2</sup> However, it was undisputed that the employer's owner, and not claimant, proposed severing the employment relationship when he asked claimant in February 2018 if he would be interested in purchasing the customer base that claimant had been serving on his route. Moreover, the parties' communications and actions over the subsequent seven months were consistent with claimant's assertion that the owner planned to eliminate claimant's position at the end of August 2018, that claimant would continue working that route only if he purchased it from the owner, and that claimant was not prepared or financially able to purchase the business. Moreover, the record does not show that claimant communicated to the employer that he was otherwise unwilling to continue working for the employer if he was not able to purchase his route from the owner. Therefore, when claimant told the owner that he was unable to secure a loan, but "thanks anyway," he communicated his final inability to purchase the route, and his implicit willingness to continue working for the employer. The owner, however, responded by confirming claimant's understanding that the employer was terminating his employment by the end of August 2018 when he stated that claimant need not even finish his final route during the last week of August 2018. The owner asserted at hearing that he understood claimant's August 17 statement that claimant was "ready to go" and his text message about finishing his August route as notice from claimant that he was quitting work.<sup>3</sup> What seems more likely than not, however, is that claimant's texts were intended to update the owner about claimant's compliance with the owner's plan to "scale back" the business and eliminate claimant's position and route. Had the owner been willing to have claimant continue working his route, it seems likely that he would have clarified with claimant whether his text messages meant that claimant was unwilling to continue working for the employer after August 2018. Under the above-cited rules, the work separation was a discharge and occurred on August 27, 2018.

**Discharge.** ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as 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.

Viewing the record as a whole, the employer discharged claimant because he was eliminating some of its customer base and no longer required claimant's labor for its remaining routes. The employer therefore did not discharge claimant for a willful or wantonly negligent violation of the standards of behavior that the employer had the right to expect of him, or an act or series of actions that amounted to a willful or wantonly negligent disregard of the employer's interests. Accordingly, claimant's discharge was not for misconduct under ORS 657.176(2)(a), and he is not disqualified from receiving benefits based on his work separation from the employer.

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<sup>1</sup> Audio Record at 12:37 to 12:41.

<sup>2</sup> Audio Record at 42:18 to 42:26.

<sup>3</sup> Audio Record at 32:46 to 34:24.

**DECISION:** Order No. 18-UI-120774 is affirmed.

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

**DATE of Service: January 22, 2019**

**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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# 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。

## 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 desisyong ito.

## 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

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**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 دستور العمل 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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