

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0222**

*Reversed & Remanded*  
*Revocada y Remitida para Otra Audiencia*

**PROCEDURAL HISTORY:** On December 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 170455). The employer filed a timely request for hearing. On February 20, 2019, ALJ Wyatt conducted a hearing, and on February 21, 2019 issued Order No. 19-UI-125019, reversing the Department's decision but concluding that claimant was entitled to benefits for the weeks of November 11, 2018 through November 24, 2018. On March 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB with his application for review. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

**CONCLUSIONS AND REASONS:** Order No. 19-UI-125019 is reversed and this matter is remanded for further proceedings.

The first issue in this case is the nature of claimant's work separation. If the employee could have continued to work for the employer for an additional period of time, the work separation was 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). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

In Order No. 19-UI-125019, the ALJ summarily concluded that claimant gave two weeks' notice to quit on November 15, 2018, and that the employer accepted claimant's notice as immediate separation from employment.<sup>1</sup> The record does not support this conclusion.

Contrary to the ALJ's summary conclusion, additional information is necessary to determine the nature of the work separation. Two witnesses testified for the employer at the hearing, but only one of the witnesses was present at the November 15, 2018 meeting when claimant allegedly gave two weeks' notice to quit work. Only one of the employer's witnesses testified that claimant refused to work for less than \$20 per hour or that he refused to work as a line worker for a lower wage. That witness was not present at the November 15 meeting, or at a prior meeting that allegedly took place during the week of November 4. A witness from both meetings, Maria Garcia from human resources, was available at the time of the hearing, but the ALJ did not take her testimony despite the conflicting testimony between the parties about what was stated at the meetings. If other witnesses who were present at the meetings are available at the hearing on remand, the ALJ should take their testimony as well as Maria Garcia's, and allow claimant to respond. The ALJ should also clarify if the supervisor heard claimant give two weeks' notice, and whether it was in English or Spanish, or whether he merely heard a summary of claimant's statements from another person present at the meeting. The ALJ should clarify if the supervisor might hold some bias against claimant because claimant had complained about the supervisor's alleged drug and alcohol use in the past. Claimant denied that he gave two weeks' notice, that he requested \$20 per hour to work as an operator, and that he refused to work as a line worker. The ALJ should clarify with *both* parties exactly what claimant's wage was during the last two months of employment, whether claimant requested different wages and training, and if he was only willing to work if the employer gave him additional training or a specific wage. If claimant made his continuing employment conditional upon training or a specific wage amount, the ALJ should ask claimant what he stated to the employer, and when, about those conditions. The ALJ should have each witness repeat exactly what was stated during the meetings during the week of November 4 and on November 15, from beginning to end, and allow each party to respond to the other parties' testimony about what was stated during the meetings.

On remand, the ALJ should also ask each party, and allow the other party to respond, regarding exactly what was said regarding claimant handing in his badge and returning to work for his paycheck on November 21, 2018. The employer's witness testified that claimant was paid for three weeks while the employer "hashed out" the situation. Transcript at 20. The ALJ should ask the employer what three weeks the employer was referring to, whether claimant worked during those three weeks, and what the employer was deciding during that time. The ALJ should ask the parties if the employer was reviewing claimant's wage during the period from November 15 to November 21, 2018, or if it reviewed his wage during some other period of time prior to the work separation. Claimant testified that he did not receive the employer's "answer" until November 21, and was discharged on that date. Transcript at 16. The ALJ should ask claimant what he thought the employer was deciding during that time. The ALJ should ask the parties about claimant's employment and work status while he awaited the employer's response. The ALJ should ask the employer until what date it paid claimant, and if it was not November 15, why the employer continued to pay claimant beyond November 15. By failing to ask the foregoing types of questions, and questioning additional witnesses when there was conflicting testimony, the ALJ did not pursue the opportunity to obtain evidence that could corroborate either the employer's or claimant's version of the work separation.

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<sup>1</sup> Order No. 19-UI-125019 at 3, 4.

We also find that the record was not sufficiently developed to support a decision as to whether claimant's work separation was disqualifying for purposes of unemployment insurance benefits. The intent of this decision is not to constrain the ALJ to asking only questions related to the specified subject matter. Therefore, in addition to asking the questions suggested, the ALJ should ask any follow-up questions he deems necessary or relevant to the nature of claimant's work separation and whether or not it should be disqualifying. The ALJ should also allow the parties to provide any additional relevant and material information about the work separation, and to cross-examine each other as necessary.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of the nature of claimant's work separation and whether or not it was disqualifying, Order No. Order No. 19-UI-125019 is reversed, and this matter is remanded for development of the record.

**DECISION:** Order No. 19-UI-125019 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia No. 19-UI-125019 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

**DATE of Service:** April 5, 2019

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-125019 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

*NOTA: La falta de cualquier parte de comparecer en la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 19-UI-125019 de la audiencia ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este asunto a la EAB.*

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# Understanding Your Employment Appeals Board Decision

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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。

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## 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 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.

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