

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0745**

*Order No. 20-UI-156173 Modified*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct within 15 days of claimant's planned voluntary leaving without good cause, and that claimant was disqualified from receiving unemployment insurance benefits effective July 28, 2019 (decision # 131331). On September 11, 2019, claimant filed a timely request for hearing on decision # 131331.

On September 16, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 25, 2019 at 2:30 p.m. On September 25, 2019, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on October 3, 2019 issued Order No. 19-UI-137525, concluding that claimant's discharge was not for misconduct and that he therefore was not disqualified from receiving benefits. On October 23, 2019, Order No. 19-UI-137525 became final without the employer having filed a request to reopen the hearing.

On February 26, 2020, the employer filed a late request to reopen the September 25, 2019 hearing. On March 31, 2020, OAH mailed notice of a hearing scheduled for April 17, 2020 at 9:30 a.m. On April 17, 2020, ALJ Shoemake convened a hearing at which claimant failed to appear, and continued the hearing to another date. On April 17, 2020, OAH mailed notice of the continued hearing scheduled for May 1, 2020 at 10:45 a.m. On May 1, 2020, ALJ Shoemake conducted the continued hearing, at which claimant again failed to appear. On May 8, 2020, ALJ Shoemake issued Order No. 20-UI-149450, allowing the employer's request to reopen the September 25, 2019 hearing, and concluding that the employer discharged claimant for misconduct, and that claimant was therefore disqualified from receiving benefits effective July 14, 2019.

On May 11, 2020, claimant filed a request to reopen the hearing that was held on April 17, 2020 and May 1, 2020. On May 18, 2020, OAH mailed notice of a hearing scheduled for May 29, 2020 at 10:45 a.m., at which claimant failed to appear. On May 29, 2020, ALJ Shoemake issued Order No. 20-UI-150463, dismissing claimant's May 11, 2020 request to reopen for failure to appear. On June 2, 2020,

claimant filed a request to reopen the May 29, 2020 hearing. On June 17, 2020, OAH mailed notice of a hearing scheduled for July 15, 2020 at 10:45 a.m. On July 15, 2020, ALJ Shoemake conducted a hearing at which both claimant and the employer appeared,<sup>1</sup> and on July 17, 2020 issued Order No. 20-UI-152271, allowing claimant's request to reopen the May 29, 2020 hearing, but denying claimant's request to reopen the May 1, 2020 hearing.<sup>2</sup>

On August 4, 2020, claimant filed a timely application for review of Order No. 20-UI-152271 with the Employment Appeals Board (EAB). EAB received claimant's application for review on September 30, 2020. On October 8, 2020, EAB issued Appeals Board Decision 2020-EAB-0640, granting claimant's and the employer's requests to reopen, modifying Orders No. 20-UI-152271 and 20-UI-149450, vacating Order No. 20-UI-150463, reversing Order No. 19-UI-137525, and remanding this matter to OAH for a new hearing on the merits of decision # 131331.

On October 13, 2020, OAH mailed notice of a hearing scheduled for October 30, 2020 at 10:45 a.m. On October 30, 2020, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on November 6, 2020, issued Order No. 20-UI-156173 affirming decision # 131331. On November 27, 2020, claimant filed a timely application for review of Order No. 20-UI-156173 with EAB.

**WRITTEN ARGUMENT:** Claimant filed a written argument in support of their application for review of Order No. 20-UI-156173. However, claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090. EAB considered only information contained within the case record when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Scott Trantel Heating & Cooling employed claimant from June 20, 2018 to July 19, 2019. The employer was managed by its sole owner, Scott Trantel who was claimant's direct supervisor. The employer did not have a human resources department.

(2) In August 2018, claimant became the employer's office manager. In that position, claimant became familiar with the employer's books, prepared job invoices and employee work schedules, spoke with customers about scheduling, complaints and billings issues, communicated with warranty companies that were expected to pay job invoices, and answered inquiries from employees about wages, paychecks and other issues.

(3) From the time claimant became the office manager, claimant's relationship with the owner steadily deteriorated due to disagreements over the owner's business practices. When employees complained that they had not been paid for working through lunch periods, which claimant learned was a violation of Oregon wage and hour law,<sup>3</sup> claimant reported the complaints to the owner, who told him to ignore

---

<sup>1</sup> The employer disconnected from the conference line before the July 15, 2020 hearing ended and did not offer evidence.

<sup>2</sup> On July 18, 2020, claimant requested that the July 15, 2020 hearing be continued; claimant mailed the letter requesting the continuance to the employer. On August 10, 2020, Presiding ALJ Lohuis denied the request.

<sup>3</sup> OAR 839-020-0050 (November 30, 2018).

them. When a technician was injured on the job, claimant requested a workers' compensation claim form from the owner. The owner responded that the technician was a subcontractor, when he was not, and refused to give claimant the form for the technician. When customers had home warranty coverage for heating and cooling repairs, the owner sometimes required claimant to submit claims and billings to the companies before the work was completed. When a customer complained that a city inspector had disclosed that a required electrical permit for which they had been charged had not been obtained, claimant spoke with the owner, who did not deny it and explained that such permits were difficult to acquire. After some investigation, claimant concluded that for approximately one hundred jobs for which the customer for that job had been billed \$250 for the cost of the permit, approximately five permits had been obtained. Claimant spoke to the owner about his dissatisfaction with being required to participate in what he considered a fraud on the customer. The owner continued to charge for permits without first obtaining the permits.

(4) Claimant sometimes spoke to the owner about his business practices in general and suggested to him that if he ran his business legally in all areas, he would not have to be "always watching behind your back." Transcript (October 30, 2020 hearing) at 28. Claimant suggested that if the owner stopped hiding things, stealing from customers, paid employees the wages owed, and stopped interfering with their workers' compensation coverage, the "business will flourish." Transcript (October 30, 2020 hearing) at 28. For a brief time after their discussion, claimant believed the employer tried to improve regarding some of the business practices claimant had criticized. However, after the owner was sued by several companies, contacted by the Internal Revenue Service regarding tax issues, and became involved in his divorce, the perceived improvements ended.

(5) In June 2019, claimant learned that the owner was charging a customer \$650 for a "line set" which the owner did not provide the customer. Transcript (October 30, 2020 hearing) at 13-14. When claimant complained that it was wrong to bill the customer for something the customer was not getting, the owner responded, "Charge them anyways." Transcript (October 30, 2020 hearing) at 14. Claimant chose not to include the item in the customer's invoice. After the owner learned that the customer had not been charged for the line set as he had instructed, the owner directed claimant to immediately charge the item on the customer's credit card, which claimant refused to do. Claimant concluded that he and the owner would never be able to resolve their differences about requiring claimant to participate in what he considered to be fraud and other illegal activities as part of his job.

(6) Shortly thereafter, on July 12, 2019, claimant submitted his resignation, effective July 31, 2019. Claimant stated, in relevant part:

Please accept this as official notice of my resignation. As you know, over the last year we have had many differences of opinion regarding the processes, work assignments, and goals for Trantel Heating and Cooling. Our conflicts have affected my ability to manage the team and . . . believe and value the purpose of Trantel Heating and cooling. It is clear to me that you and I will not be able to resolve our differences. Therefore, I feel that resigning is the best option for me and for the team.

Exhibit 1 at 115.

(7) Shortly after July 12, 2019, the owner's brother, who had just been released from prison, threatened claimant. Claimant believed the threat was related to his resignation notice and reported the threat to the owner.

(8) On July 18, 2019, the owner also concluded that "this is not going to work out." Audio Record (May 1, 2020 hearing) at 12:30 to 12:40. On July 19, 2019, the owner told claimant in a letter that he was accepting claimant's resignation, "effective immediately." Exhibit 1 at 116. The owner did not give claimant a reason for ending his employment prior to July 31, 2019, but thanked claimant for his "hard work and attention to detail," and told him he had been a "valuable asset and team member" and would "be missed." Exhibit 1 at 116.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving with good cause.

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). 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).

ORS 657.176(2)(c) provides that a claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

However, ORS 657.176(8) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date."

The order under review concluded that ORS 657.176(8) applied to claimant's work separation because claimant's planned quit on July 31, 2020 was not for good cause, but that the employer discharged claimant not for misconduct on July 19, 2020, within fifteen days of claimant's planned quit. Order No. 20-UI-156173 at 4-6. Although the record supports the order's conclusion that the employer discharged

claimant, not for misconduct, it does not support its conclusion that claimant's planned quit was for reasons that did not constitute good cause.

**Work Separation.** 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). There is no dispute that when claimant notified the employer on July 12, 2019 that he planned to quit work on July 31, 2019, he was willing to continue to work for the employer until that day. Nor is there any dispute that on July 19, 2019, the employer gave claimant a letter, dated that day, that he was accepting claimant's resignation, "effective immediately." Accordingly, the work separation was a discharge that occurred on July 19, 2019.

**Discharge.** The owner's July 19, 2019 letter stated that he was accepting claimant's resignation, "effective immediately" without giving a reason for advancing claimant's final day of work, and stated that claimant had been a "valuable asset and team member" and would "be missed." At the May 1, 2020 hearing in this matter, the owner stated that he decided to discharge claimant that day because beginning on July 15, 2019, claimant had "refused to schedule, . . . which was his job," and began forwarding office phone calls to the owner's personal number, which claimant was not supposed to do. Audio Record (May 1, 2020 hearing) at 11:15 to 11:50. However, on July 9, 2019, the owner told claimant by email that the owner, rather than claimant, would do the scheduling from that point forward, and on July 18, 2019, the owner apologized to claimant for "taking the phone and scheduling away from you." Exhibit 1 at 44, 49. Based on these inconsistencies in the record, the owner's testimony that he discharged claimant for refusing to schedule was not credible. Accordingly, the record fails to show that the owner discharged claimant because he had engaged in conduct that constituted a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of him or a willful or wantonly disregard of the employer's interests. Accordingly, on July 19, 2019, the employer discharged claimant, but not for misconduct under ORS 657.176(2)(a).

**Voluntary leaving.** On July 12, 2019, claimant submitted notice of his planned resignation on July 31, 2019 to the owner because of what he considered unresolvable differences between them. The order under review concluded that claimant's planned quit was without good cause, reasoning that the situation was not so grave that claimant did not have reasonable alternatives to quitting when he did. Order No. 20-UI-156173 at 6. However, the record does not support that conclusion.

The unresolvable differences that led claimant to quit included the owner's continuing requirement that claimant participate in fraudulent or illegal activities by preparing customer billings which included charges for permits that had not been obtained or services that had not been performed. The unresolvable differences also included the owner's expectation that claimant remain silent about the fraudulent activity, unpaid wages to employees, and the owner's failure to provide worker's compensation coverage to employees entitled to such coverage. Claimant was also unwilling to continue working for the owner after receiving threats from the owner's brother. Viewing the record as a whole, claimant's situation was grave.

Claimant had no reasonable alternative but to resign when he did. The owner was claimant's direct supervisor, and the employer had no human resources department or chain of command above the owner to whom claimant could complain about his difficulties with the owner. Claimant had told the owner that he objected to being required to participate in what he considered fraudulent or illegal activities as

part of his job, but the record does not show that the owner changed his practices. Viewed objectively, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have quit work when claimant did.<sup>4</sup> Accordingly, claimant's planned quit was with good cause.

Because claimant's planned quit was with good cause, ORS 657.176(8) does not apply. Therefore, on this record, the employer discharged claimant, but not for misconduct under ORS 657.176(2)(a). Accordingly, claimant is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 20-UI-156173 is modified, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** December 30, 2020

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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. 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

---

<sup>4</sup> Although claimant received threats from the owner's brother after submitting his resignation, the relevant period for analyzing whether good cause existed is the date of the work separation. See, *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017) (the relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date); see accord *Kay v. Employment Department*, 284 Or App 167, 391 P3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or App 604, 403 P3d 423 (2017); *Kay v. Employment Department*, 292 Or App 700, 425 P3d 502 (2018) (*Kay II*).



# 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 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 فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف 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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.