

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1211**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 23, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 74809). The employer filed a timely request for hearing. On October 3, 2023, ALJ Messecar conducted a hearing, and on October 10, 2023 issued Order No. 23-UI-238237, reversing decision # 74809 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective June 25, 2023. On October 26, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Kiefer Mazda Kia Inc. employed claimant from January 3, 2017 until June 30, 2023.

(2) In March 2023, the employer transferred claimant from their Eugene, Oregon dealership to a position as a sales manager at their car dealership in Bend, Oregon. Claimant was generally dissatisfied with the amount he was paid as a sales manager at the Bend dealership and felt that when he transferred there, the employer "acted like [claimant] was going to make a lot more than [he] was." Transcript at 16.

(3) On June 24, 2023, the general manager of the Bend dealership informed claimant that the employer intended to promote claimant and the general manager would be presenting claimant with the new position's proposed pay plan soon.

(4) On June 27, 2023, the general manager presented the pay plan to claimant, which amounted to a \$10,000 per month guarantee with a \$2,000 per month potential bonus. The pay plan fell short of the amount claimant wished to be paid, which was \$15,000 per month. The general manager told claimant to take some time to think about the offer.

(5) On June 30, 2023, claimant called the general manager to advise he could not work that day because he had to be present at his home in Eugene to accept delivery of a couch. During the call, the general manager asked claimant if he had given thought to the pay plan. Claimant responded, “I appreciate the offer, but I don’t think it’s going to be enough to keep me in the long run” and that “eventually [the employer] can expect [claimant’s] notice.” Transcript at 19-20. Claimant did not give a date or timeframe as to when he might quit working for the employer. Claimant told the general manager, “When I do give my notice, I’ll give you another 30 days if you want.” Transcript at 20. The general manager asked claimant to confirm that he would be at work over the next several days to follow—July 1, 2, and 3, 2023—which were days the general manager planned to be out of town and were the other sales manager’s normal days off. Claimant confirmed that he would be at work those days, and the call ended.

(6) A few hours later, the general manager attempted to call claimant, but claimant missed the call. Claimant called the general manager back and the general manager said “yeah, I was just calling because we wanted to let you know we’re just going to let you go effective immediately.” Transcript at 20. Claimant accepted the employer’s decision to terminate his employment, which did not give claimant time to look for another job as he had planned to do prior to giving his notice of resignation.

(7) At the time of claimant’s work separation, claimant’s job was not in jeopardy and the employer was pleased with claimant’s work performance, regarding him as “a very talented man.” Transcript at 11.

**CONCLUSIONS AND REASONS:** Claimant was discharged, but not for misconduct.

**Nature of the Work Separation.** 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) (September 22, 2020). 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).

The order under review concluded that claimant voluntarily quit working for the employer, and that claimant’s voluntary leaving was without good cause. Order No. 23-UI-238237 at 2-3. The record does not support the conclusion that claimant voluntarily quit working for the employer.

The parties offered contrasting accounts of the circumstances relating to claimant’s work separation. The employer’s witness, who was the general manager, testified that the work separation was near in time to the general manager’s planned departure for a new job with the employer, which in turn put claimant in line for a promotion. Transcript at 6. The general manager further testified that on either June 27 or June 29, 2023, he proposed a compensation plan to claimant of \$12,000 per month guaranteed but that claimant wanted \$20,000 per month guaranteed. Transcript at 6, 8-9. The general manager further testified that on June 30, 2023, claimant told him that he “wanted to depart” because he felt he deserved more money and believed he could find a better-paying job, but was available to continue to work for a

two-week notice period. Transcript at 10-11. The general manager stated that June 30, 2023 was “right before [the general manager] was going out of town” but he had already talked to the employer’s other sales manager to cover for him and so did not need claimant to continue working. Transcript at 11. The general manager testified that he told claimant, “You don’t have to work your two weeks,” and the two “parted ways.” Transcript at 11.

Claimant testified that the employer was aware that claimant was generally dissatisfied with amount he was paid as a sales manager and that claimant felt, when he was transferred to the Bend dealership, that the employer “acted like [claimant] was going to make a lot more than [he] was.” Transcript at 16. Claimant stated that on June 24, 2023, the general manager told claimant that the employer intended to promote claimant and the general manager would be presenting claimant with the new position’s proposed pay plan soon. Transcript at 16. On June 27, 2023, the general manager presented the pay plan to claimant and gave him some time to think about it. Transcript at 18. Claimant testified that the pay plan amounted to a \$10,000 per month guarantee with a \$2,000 per month potential bonus, which fell short of claimant’s request of \$15,000 per month. Transcript at 17. Claimant testified that June 28 and 29, 2023 were claimant’s days off with June 30, 2023 being his next day of work at the Bend dealership. Transcript at 19. On the morning of June 30, 2023, claimant called the general manager to advise he could not work that day because he had to be present at his home in Eugene to accept delivery of a couch. Transcript at 19. During the call, the general manager asked claimant if he had given thought to the pay plan. Transcript at 19. Claimant said “I appreciate the offer, but I don’t think it’s going to be enough to keep me in the long run” and that “eventually [the employer] can expect [claimant’s] notice.” Transcript at 19-20. Claimant testified that he never gave any date or timeline as to when he might quit and told the general manager, “When I do give my notice, I’ll give you another 30 days if you want.” Transcript at 20. Claimant testified that the general manager asked claimant to confirm that he would be at work over the next several days to follow—July 1, 2, and 3, 2023—which were days the general manager planned to be out of town and were the normal days off of the employer’s other sales manager. Transcript at 20. Claimant confirmed that he would be at work, and the call ended. Transcript at 20.

Claimant testified that a few hours later, the general manager attempted to call claimant, but claimant missed the call. Transcript at 20. Claimant called the general manager back and the general manager said, “yeah, I was just calling because we wanted to let you know we’re just going to let you go effective immediately.” Transcript at 20. Claimant testified that he accepted the employer’s decision, which did not give him any time to look for another job as he planned to do before putting in a notice of his intent to quit. Transcript at 21.

The reliability of the accounts of the parties are nearly equally balanced. However, at hearing, the general manager failed to recall several ancillary details, such as how many times he spoke to claimant on June 30, 2023. Transcript at 4-5, 25. Moreover, the general manager initially recalled that the June 30 meeting in which he alleged that claimant stated he was quitting occurred in person, only to later agree with claimant’s account that the meeting happened over the phone. Transcript at 10, 13-14, 24. The general manager also initially recalled that the meeting in which claimant was presented with the pay plan for the potential promotion occurred on June 29 and that claimant considered the offer overnight, but later stated that the meeting probably occurred on June 27 and that claimant thought about the offer over his usual days off of June 28 and 29, 2023. Transcript at 6, 8-9.

By contrast, claimant testified with conviction and exhibited a better familiarity of details. While many of the details claimant recalled, such as that he called out of work on June 30, 2023 to accept delivery of a couch or that he initially missed the general manager's call on June 30, 2023, and then called him back, were not central to the issue of claimant's work separation, they supply his account with a sense of reliability that is slightly superior to that of the employer's account. Accordingly, the weight of the evidence favors claimant's account and the facts of this decision have been found in accordance with it.

Therefore, the record shows that on June 30, 2023, claimant advised the employer that he would eventually quit, and then confirmed his intent to work the next several days to follow. In response, the employer informed claimant that they were letting him go effective immediately. Accordingly, claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer. The work separation was therefore a discharge that occurred on June 30, 2023.

**Discharge.** 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).

The record fails to show that the employer's decision to discharge claimant was the result of any violation of a workplace standard of behavior or disregard of the employer's interest. At hearing, the general manager testified that at the time of the work separation, claimant's job was not in jeopardy and the employer was pleased with his work performance, praising claimant as "a very talented man." Transcript at 11. The record evidence suggests that the employer discharged claimant merely because he had advised that he would eventually quit, which does not amount to misconduct.

Accordingly, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a), and claimant is not disqualified from receiving benefits based on this work separation.

**DECISION:** Order No. 23-UI-238237 is set aside, as outlined above.

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

**DATE of Service:** December 14, 2023

**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](https://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.



# 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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 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 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)

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