

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0103**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 21, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective August 27, 2023 (decision # 162818). Claimant filed a timely request for hearing. On January 9, 2024, ALJ Adamson conducted a hearing, and on January 11, 2024, issued Order No. 24-UI-245352, affirming decision # 162818. On January 24, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Complete Brush Cutting Service, LLC employed claimant as a truck driver from August 2021 until August 30, 2023.

(2) When claimant was hired, both he and the employer knew that claimant was not licensed to operate the types of vehicles the employer would require him to drive. Claimant believed that the employer would assist him in getting the required license, financially and otherwise, but they failed to do so within the first year of claimant's employment. Nonetheless, claimant operated the vehicles.

(3) On August 22, 2022, claimant was cited by law enforcement for operating one of the employer's vehicles without being properly licensed. The employer's owner was also cited that day for violations including allowing claimant to operate the vehicle unlawfully. Either claimant or the employer may also have been cited for the vehicle being in a condition that violated several laws, at least some of which involved safety.

(4) In September 2022, claimant obtained the proper license to operate the employer's vehicles. From August 22, 2022, through the time claimant obtained the license, the employer may have required

claimant to continue operating vehicles for which he was not licensed, advising him to simply to avoid routes with weigh stations where he was likely to encounter law enforcement. In September 2022, claimant believed that he “became persistent about maintenance and the quality of the condition of the trucks” with the employer, but that issues regarding safety and legality often went unresolved. Exhibit 1 at 3.

(5) From September 2022 through July 2023, claimant continued to inform the employer about various safety and other defects with the vehicles he was required to operate. Claimant believed that the employer did not adequately repair the vehicles such that they were safe and lawful to operate, but claimant continued to operate them.

(6) Claimant understood that the terms of his employment provided that the employer would pay his wages no later than the fifth of each month for the previous month’s work. Claimant believed that, over the course of his employment, “nearly half” of his wage payments were late or were for an amount less than what he had earned, that his paystubs contained significant inaccuracies, and that the employer was slow and reluctant to correct errors. Exhibit 1 at 36. Additionally, claimant and the employer at times disagreed over what work expenses the employer would or should reimburse claimant for, including claimant’s commutes to distant locations assigned by the employer.

(7) On July 17, 2023, one of claimant’s coworkers texted claimant, falsely, that claimant would not be paid for his time commuting to a distant location that day because claimant declined to carpool with that coworker, and that claimant should go back home. Claimant received the text while driving to the distant worksite, causing him “frustration.” Exhibit 1 at 5. Claimant texted back, “Then my notice is in[.] The 32st [sic].” Exhibit 1 at 5. By this, claimant meant that he intended to quit work effective August 31, 2023. Claimant then contacted the employer, who told him that what the coworker texted was false, and claimant reported to work that day as anticipated. Prior to this incident, claimant had been considering quitting due to ongoing pay and vehicle safety issues.

(8) On July 18, 2023, claimant texted the employer that he had submitted his resignation to the coworker the day before and he would “like to be done by September 1<sup>st</sup>.” Exhibit 1 at 6. The employer asked if they could “talk about it” and claimant agreed to do so, and stated that there was “a lot to talk about.” Exhibit 1 at 6. In the same text, claimant alerted the employer to a problem with his assigned vehicle that needed to be fixed.

(9) Shortly after July 18, 2023, claimant and the employer met in person and discussed claimant’s reasons for wanting to quit work. The employer recalled this discussion as largely involving “money,” though issues regarding the condition of the vehicles may also have been discussed. The employer offered to “see what we can do to get [claimant] more money in his pocket,” and claimant responded that his intention to stop working August 31, 2023 “was not set in stone” and that he could “see how these other things unfolded” regarding his complaints. Transcript at 20.

(10) From July 18, 2023, through August 31, 2023, claimant continued to report safety issues with the vehicles he operated, as he believed that employer did not remedy the issues such that the vehicles were safe or legal to operate.

(11) On approximately August 6, 2023, claimant notified the employer that his paycheck for July 2023 was short in an amount equivalent to 20 hours of wages. The employer responded that he would look into it on Monday, August 7, 2023. The employer did not pay the missing wages until August 22, 2023.

(12) On Wednesday, August 30, 2023, a coworker asked claimant about working on a specific job on Friday, September 1, 2023. Claimant replied that his last day of work was Thursday, August 31, 2023, so they should do that job Thursday instead of Friday. On Wednesday evening, the employer texted claimant they had no work for him on Thursday, therefore asking, “[D]o you mind having a three-day weekend?” Transcript at 21. Claimant replied, “We’re both acknowledging today was my last day then?” to which the employer replied, “I wasn’t sure[.]” Exhibit 1 at 9. Claimant did not work for the employer on August 31, 2023, or thereafter.

(13) Claimant quit working for the employer on August 30, 2023, primarily because he believed longstanding complaints regarding his pay and “the unsafe condition of the trucks” had not been sufficiently addressed by the employer throughout his employment, particularly following their July 2023 discussion about his intention to resign. Exhibit 1 at 9.

**CONCLUSIONS AND REASONS:** Order No. 24-UI-245352 is set aside, and this matter remanded for further development of the record.

**Nature of the work separation.** If an 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 an 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 was discharged, not for misconduct, after claimant notified the employer that he would leave work on August 31, 2023, but the employer had no work for him on that date. Order No. 24-UI-245352 at 2. The record does not support this conclusion, but instead shows that claimant voluntarily quit work.

The record shows that the employer did not have work for claimant on August 31, 2023, but that they otherwise had work for claimant following a “three-day weekend,” presumably consisting of August 31, 2023, through September 2, 2023, and desired to maintain the employment relationship with claimant through that period of time and thereafter. Transcript at 21. Though claimant was willing to work on August 31, 2023, claimant was unwilling to work for the employer on or after September 1, 2023. Therefore, claimant could have worked for the employer for an additional period of time beyond August 30, 2023, but chose not to do so. Accordingly, the work separation is properly characterized as a voluntary leaving which occurred August 30, 2023.

**Voluntary leaving.** 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) (September 22, 2020). “[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.

The order under review concluded that claimant voluntarily quit work due to the July 17, 2023, incident in which his coworker texted him false information, and that the incident did not constitute a grave situation. Order No. 24-UI-245352 at 3.<sup>1</sup> The record does not support that this was the only reason, if a reason at all, that claimant quit working for the employer on August 30, 2023. Further development of the record is needed to determine whether claimant's reasons for quitting work on that date demonstrated that he faced a grave situation, and whether reasonable alternatives to leaving were available.

The relevant period to analyze in determining 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. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017). Claimant initially told a coworker on July 17, 2023, that he would stop working for the employer on August 31, 2023, and told the employer the same thing the following day. Claimant gave conflicting testimony about whether, had the July 17, 2023, incident not occurred, he would have given notice of his resignation on that date, but maintained that he "was planning on giving [his] notice" for other reasons, though not on a specific date. Transcript at 6, 8. Shortly after the employer learned of claimant's resignation, claimant and the employer discussed claimant's reasons for wanting to quit, which appear to have been long-standing complaints regarding pay and the condition of vehicles. The employer wanted claimant to rescind his resignation and, to get him to do so, led claimant to believe that his complaints would be addressed. The record suggests that claimant then equivocated, at least as to the resignation's effective date and perhaps the resignation itself, while he assessed the employer's progress in addressing his complaints.

In the weeks that followed, claimant contended that the paycheck he was issued in early August 2023 was short by a significant amount, an error which took the employer more than two weeks to remedy after being notified of it. Exhibit 1 at 31-33. Claimant also presented evidence of at least two occasions, July 26, 2023, and August 7, 2023, on which he informed the employer of urgent safety issues with the vehicle he was operating, and suggested that the employer had him continue operating the vehicle for at least some period thereafter in a dangerous condition. Exhibit 1 at 15, 23. The record therefore suggests that when claimant told the employer on August 30, 2023, that his previous resignation would stand and that he would not be working for them after August 31, 2023, it was because problems that he had long complained of regarding pay and vehicle conditions had persisted. Further development of the record is warranted to determine all of the reasons claimant quit working for the employer on August 30, 2023, and whether he faced a grave situation as a result.

On remand, inquiry should be made with regard to how frequently claimant's pay was late or short, or his paystubs were inaccurate or otherwise failed to comply with legal requirements; whether the employer failed to reimburse claimant for expenses after they had agreed to do so; how long the employer took to address pay or paystub errors when they occurred; whether pay irregularities would likely have continued to occur had claimant not quit; and whether claimant ever contacted the Bureau of

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<sup>1</sup> As discussed above, the order under review erroneously concluded that claimant was discharged within a 15-day period of when his resignation was to take effect. However, the order still analyzed the separation as a voluntary leaving because it occurred during the same benefit week as the purported discharge. Order No. 24-UI-245352 at 2.

Labor and Industries (BOLI) to report pay or paystub issues. While isolated instances of pay irregularities may not necessarily constitute a grave situation, where unfair labor practices are ongoing, it is not reasonable to expect an employee to continue to work for an indefinite period of time. *See J. Clancy Bedspreads & Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990).

Inquiry also should be made into whether the employer required claimant to operate a vehicle that they had reason to know was in a condition that rendered it unsafe or unlawful to drive, particularly from July 18, 2023 through August 30, 2023, and, if so, whether the employer likely would have continued to require claimant to operate a vehicle in such a condition had he not quit. If reasons other than pay or safety concerns caused claimant to state on August 30, 2023, that he would not work for the employer after August 31, 2023, these reasons should also be explored in detail on remand.

If claimant shows that he stopped working for the employer when he did because he faced a grave situation for one or a combination of reasons, inquiry should also be made into whether claimant had reasonable alternatives to leaving. As pay and worker safety complaints such as those asserted by claimant can fall within the purview of government agencies, inquiry should be made as to whether claimant relayed his complaints to any agency, such as BOLI, the Occupational Safety and Health Administration (OSHA), or a state or federal transportation department and, if not, whether such efforts would have been futile. Furthermore, the employer's record of correcting or failing to correct problems that they knew or should have known claimant faced regarding pay, safety, or compliance with legal requirements over the entire course of claimant's employment, and particularly during July and August 2023, will likely be probative of whether any additional action claimant could have taken to address these issues with the employer would have been futile.

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 further development of the record is necessary for a determination of whether claimant voluntarily quit work without good cause, Order No. 24-UI-245352 is reversed, and this matter is remanded.

**DECISION:** Order No. 24-UI-245352 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 4, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-245352 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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**

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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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