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

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VQ 005.00

# EMPLOYMENT APPEALS BOARD DECISION
# 2024-EAB-0369

*Affirmed*
*Disqualification*

**PROCEDURAL HISTORY:** On February 16, 2024, 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 November 12, 2023 (decision # 141821). Claimant filed a timely request for hearing. On March 21, 2024, ALJ Nyberg conducted a hearing, and on March 28, 2024 issued Order No. 24-UI-251075, affirming decision # 141821. On April 15, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her 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 her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Claimant also asserted that the hearing proceedings were unfair or the ALJ was biased. Claimant's assertion of bias cited disagreement with several findings of fact in the order under review. However, these findings did not evince bias. As discussed in further detail below, when a claimant voluntarily quits work, they bear the burden of showing, by a preponderance of evidence, that they quit with good cause. When a party testifies to a first-hand account that conflicts with the other party's first-hand account, those accounts are generally no more than equally balanced. In that situation, claimant, as the party with the burden of proof, has not met that burden, and the disputed facts are properly found according to the other party's first-hand account. Where the order under review and this EAB decision have made findings contrary to claimant's accounts, this does not constitute evidence of bias or misunderstanding the testimony, but is the result of weighing the evidence according to the legal standard of proof.

Regrettably, the order under review used an outdated term in explaining its conclusion that claimant faced a grave situation at work. Order No. 24-UI-251075 at 3. As this conclusion favored claimant, and

there is no other indication in the record of bias for or against any party, it can reasonably be inferred that the use of this term was the result of a lack of understanding as to its contemporary meaning and usage. Such usage did not affect the outcome of the proceedings. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1). (August 1, 2004).

**FINDINGS OF FACT:** (1) Sit Tight employed claimant as a line cook at their restaurant and bar until November 16, 2023.

(2) At hire, claimant believed that the employer offered to train her to be a sous chef by assigning additional responsibilities to her beyond that of a line cook. Claimant did not receive additional compensation for these responsibilities. The employer did need a sous chef or kitchen manager because one of the two co-owners, B., managed the kitchen. Claimant considered B. to be her immediate supervisor. The employer believed that claimant had asked to be trained "on things like prep and managerial responsibilities," and assigned her such tasks in addition to her line cook duties per her request, but the employer was generally dissatisfied with her work on these tasks. Transcript at 22-23. Claimant's additional responsibilities, the employer's dissatisfaction with her work, and claimant's compensation were frequent sources of conflict between her and the employer throughout the time she was employed.

(3) In early November 2023, claimant observed and removed a sticker she believed represented "a white power group . . . from Idaho" that had recently been affixed to "one of our machines" on the premises. Transcript at 5.

(4) On approximately November 14, 2023, claimant was delivering food to tables in the restaurant's dining room. Claimant, who is a transgender woman, overheard one or more customers say the phrase "this fucking transgender bitch" and other things of "that nature." Transcript at 6.

(5) At approximately 11:00 p.m. on November 14, 2023, claimant left the restaurant after finishing her shift and discovered that some of her car's tires had been punctured. Claimant texted P., the other co-owner, that her tires had been "slashed" and that she "had overheard things in the dining room that made [her] feel extremely uncomfortable and that [she] was afraid for [her safety.]" Transcript at 19-20; 31-32. Claimant did not further describe what she overheard to P. P. responded by text "with empathy that that seems [like] a scary situation" and expressed "hope she gets home safe and to let me know if she needs anything." Transcript at 18. Claimant and P. spoke about the incident the following day in a conversation claimant initiated, and claimant told him that a tire repair shop had been able to seal the punctures and render the tires usable.

(6) After claimant's tires were damaged, B. did not ask claimant about the incident and the two did not discuss the matter. This upset claimant and made her feel that the employer did not care about her safety at work.

(7) On approximately November 16, 2023, the restaurant was burglarized while it was closed for the night. After learning about the incident, claimant believed that "it show[ed] we were in a dangerous area

and that dangerous things [were] going on outside of [the] restaurant," causing her to feel "unsafe." Transcript at 34.

(8) On November 16, 2023, claimant quit working for the employer because she felt unsafe due to finding the sticker, overhearing the customer comments, having her tires damaged, and the burglary. Claimant did not request that the employer increase safety measures for employees because she believed that she should not have to work in a place where safety measures, such as being escorted to her car, might be advisable. Claimant also believed that the co-owners did not care about her safety because they did not initiate a follow-up conversation with her about the tire damage the day after the damage occurred, leaving claimant to initiate that conversation with P.

**CONCLUSIONS AND REASONS:** Claimant quit work without good cause.

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.

Claimant quit working for the employer due to concerns for her safety arising out of a series of events beginning with her discovery of a sticker and ending with a burglary at the restaurant. While both parties testified regarding conflict over the scope of claimant's work responsibilities, compensation, and whether her work was satisfactory, claimant testified that this was not her reason for quitting, and "basically what it boils down to is I didn't feel safe and I couldn't continue to work there." Transcript at 28, 32. Therefore, only the incidents of the two weeks prior to her quitting that caused claimant to feel unsafe are the proper subject of the good cause analysis.

In combination, the incidents occurring in a span of two weeks that caused claimant to feel unsafe constituted a grave situation. Claimant first discovered a sticker that she believed was associated with a white supremacist group. Not long after, she overheard one or more customers using foul language to refer to a transgender person, which claimant believed to be a reference to her. That night as she left work, she discovered apparently intentional damage to the tires of her car. Two nights later, the business was burglarized. While the record does not establish that some of these events, such as placement of the sticker or the burglary, were intended to affect claimant personally, in the context of other events that could reasonably be inferred to have been targeted at claimant, her feelings of fear from the incidents collectively is understandable. Accordingly, claimant faced a grave situation.

However, claimant has not shown that she had no reasonable alternative but to leave work. The record does not show that claimant informed the employer about finding the sticker or asked them to take any action regarding it. P. testified that he knew "[a]bsolutely nothing" regarding the sticker having been found in the restaurant. Transcript at 21. Further, while claimant testified that she told P., "I overheard things in the dining room that made me feel extremely uncomfortable and that I was afraid for my

safety," the record does not show that claimant told P. that what she heard was transphobic or about her specifically. Transcript at 31-32. Because the fears that prompted claimant to quit were based, at least in part, on the actions of one or more customers, it would have been reasonable for claimant to alert the employer that the sticker had been found in the restaurant and that a customer had made offensive comments about her while she was nearby. The employer might then have investigated to determine which customers were responsible and prohibited them from returning to the business, or otherwise enhanced security measures in the dining room.

Regarding the tire damage, while claimant promptly reported the incident to P., and reported to him the next day that the tires had been repaired, claimant did not request that the employer take any specific action to increase security for her personally or the parking lot generally. Claimant's assumption that the employer did not care about her safety because only one of the two co-owners discussed the tire incident with her the following day, and because claimant had to initiate that conversation, did not establish that requesting additional security measures would have been futile. P. testified that when claimant told him that she was "uncomfortable" due to the customer comments and tire damage, he "was very empathetic in that situation and . . . wanted to work with [claimant] on it[.]" Transcript at 29. When she quit work two days after the tire damage, claimant had the reasonable alternatives of specifying what actions the employer could take to make her feel safer at work and in the parking lot, and of allowing the employer time to implement these requests or devise additional precautions of their own. It can be inferred from claimant's suggestion at hearing that she "should not have to work at a place where [she] needed an escort" to her car that she did not avail herself of these alternatives because she was unwilling to continue working for the employer under any circumstances, even those that would, more likely than not, have alleviated the grave situation she faced. Transcript at 11. Because claimant had reasonable alternatives to quitting, she has not shown good cause for leaving work.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective November 12, 2023.

**DECISION:** Order No. 24-UI-251075 is affirmed.

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

**DATE of Service: <u>May 29, 2024</u>**

**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.

**<u>Please help us improve our service by completing an online customer service survey</u>**. To complete the survey, please go to <u>https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey</u>. 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

### 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل 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
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