

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0570

Affirmed
Disqualification
Overpayment Assessed

PROCEDURAL HISTORY: On May 29, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective April 28, 2024;¹ and that claimant had failed to disclose a material fact which resulted in an overpayment of \$1,257 in benefits which claimant was required to repay to the Department (decision # L0004290895). Claimant filed a timely request for hearing. On July 8, 2024, ALJ Schmidt conducted a hearing regarding the work separation. The portion of the hearing addressing the overpayment was continued. On July 11, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 25, 2024. On July 25, 2024, ALJ Schmidt conducted a continued hearing on the overpayment issue, at which claimant failed to appear. On July 26, 2024, ALJ Schmidt issued Order No. 24-UI-260563, modifying decision # L0004290895 by concluding that claimant had voluntarily quit work and was disqualified from receiving benefits effective April 28, 2024, but that the resulting overpayment was not due to claimant having failed to report a material fact, and that claimant therefore was only required to repay the overpayment via deduction from future benefits. On August 5, 2024, 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.

¹ Decision # L0004290895 stated that claimant was denied benefits from April 28, 2024, to January 18, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. *See* ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning April 28, 2024, and until he earned four times his weekly benefit amount in subject employment.

FINDINGS OF FACT: (1) Palina Property Management employed claimant as a maintenance technician from March 28, 2024, until April 30, 2024. The employer managed affordable housing properties, and claimant worked at one of these properties in the Old Town neighborhood of Portland, Oregon.

(2) Claimant's girlfriend also worked for the employer at another property, about a block away from the building at which claimant worked. As such, claimant and his girlfriend typically drove to work together. After parking, claimant would typically walk his girlfriend to her building, and then walk to work himself. Claimant did so for safety reasons, as street crimes were common in the area.

(3) On April 30, 2024, claimant and his girlfriend commuted to work as usual. However, as claimant was running late that morning, he only walked his girlfriend part-way to her building before leaving her to go to work himself.

(4) Shortly after claimant arrived at work, he received a phone call from the maintenance technician at his girlfriend's building, who informed claimant that his girlfriend had been punched in the face by a stranger on the street. The other maintenance technician told claimant that claimant's girlfriend had not called claimant herself because she was busy speaking to the police. Claimant tried unsuccessfully to reach his girlfriend by phone.

(5) The news of his girlfriend's assault and his inability to reach her upset and alarmed claimant. A short while later, while claimant was in his building's lobby, the building's property manager arrived on the premises. The property manager found claimant "yelling" in the lobby while several of the building's residents were present. Transcript at 39–40. Concerned that claimant's behavior would alarm the residents, the property manager asked claimant to calm down and speak with her in her office. Claimant refused and told the property manager that he needed to go see his girlfriend because she had been assaulted. The property manager asked claimant if his girlfriend was okay, but claimant responded that he did not know. He then "started screaming" and told the property manager, "Forget this, you know, I'm done with this... I quit." Transcript at 40. The property manager asked claimant to confirm that he was quitting, which claimant did, and she then accepted claimant's resignation.

(6) Claimant voluntarily quit because he felt compelled to go check on his girlfriend and believed that the property manager had refused to allow him to do so. However, because claimant never asked for permission to check on his girlfriend, the property manager never refused to allow him to go. The property manager would have allowed claimant to do so if he had asked for permission.

CONCLUSIONS AND REASONS: Claimant voluntarily 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 voluntarily quit working for the employer because he believed, after learning that his girlfriend had been assaulted near her own workplace, that the building's property manager was refusing to allow him to go check on her to confirm that she was okay. If the record showed that claimant's beliefs in this regard were accurate, such might constitute a grave reason for quitting. However, the parties' accounts of the discussion between claimant and the property manager differed significantly. At hearing, the property manager testified that she attempted to calm claimant down so that he could discuss the matter with the manager in her office, rather than in front of several residents; and that claimant refused to do so, instead choosing to quit after the manager asked him to explain what had happened. Transcript at 39–40. The property manager also testified that claimant never asked her for permission to leave, and that she would have granted him permission had he asked. Transcript at 41. By contrast, claimant testified that he quit because he “wasn't allowed to walk down [to his girlfriend's building] and check out [his] girlfriend that got assaulted.” Transcript at 18. Claimant admitted, however, that it was “possible” that the property manager's testimony that she had not denied him permission to go check on his girlfriend was correct because he was “pretty upset” during their conversation. Transcript at 43–44.

On balance, the property manager's testimony is afforded more weight. Claimant's admission that it was possible that the property manager's account was correct casts doubt on the reliability of his own testimony. Furthermore, claimant bears the burden of proof. Because the evidence as to whether claimant actually asked for permission to check on his girlfriend, or whether the property manager refused to allow him to do so, is at best equally balanced, claimant did not meet his burden of proof on these points. The facts have been found accordingly.

Although claimant's concern for his girlfriend's safety and well-being was understandable, as was his desire to go check on her following the news of her assault, claimant has not shown by a preponderance of the evidence that he faced a situation of such gravity that he had no reasonable alternative but to quit. The record shows that the property manager would have allowed claimant to check on his girlfriend had he merely asked to do so. Although he was understandably upset, claimant did not show that he lacked the ability to briefly explain what had happened and then ask for permission to check on his girlfriend. Instead, it appears that claimant incorrectly assumed that the property manager was refusing him permission to go check on his girlfriend, and acted on that incorrect assumption in deciding to immediately quit. As such, claimant failed to pursue the reasonable alternative of discussing the matter with the property manager, and therefore quit without good cause.

For the above reasons, claimant voluntarily quit work without good cause, and is therefore disqualified from receiving unemployment insurance benefits effective April 28, 2024.

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-260563 concluding that claimant was overpaid \$1,257 in benefits, not due to claimant having failed to report a material fact, and that claimant therefore is only required to repay the overpayment via deduction from future benefits. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-260563 is **adopted**.

DECISION: Order No. 24-UI-260563 is affirmed.

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

DATE of Service: August 26, 2024

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.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”.

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 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

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.