

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0619

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 20, 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 May 19, 2024 (decision # L0004616197). Claimant filed a timely request for hearing. On August 13, 2024, ALJ Schmidt conducted a hearing, and on August 21, 2024, issued Order No. 24-UI-263263, reversing decision # L0004616197 by concluding that claimant voluntarily quit work with good cause, and therefore was not disqualified from receiving benefits based on the work separation. On August 26, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Washington County employed claimant as a housing inspector from October 1, 2018, until April 12, 2024.

(2) Claimant's duties included on-site inspections of housing properties owned by the employer. As such, the employer required claimant to maintain a valid driver's license so that she could drive to those properties. Claimant understood this requirement. Much of claimant's work was also administrative in nature, and performed at the employer's office.

(3) On or around February 18, 2024, claimant was driving home from a winery when she fell asleep behind the wheel and crashed her vehicle. Claimant was subsequently arrested and charged with driving while under the influence of intoxicants (DUII). Claimant was not given a breathalyzer test at the scene of the accident, but her blood alcohol content (BAC) was taken via blood draw at a hospital after the arrest. As of the date of the August 13, 2024, hearing, the results of that BAC test were not yet available.

(4) Claimant had consumed a single glass of wine at the winery some time before departing, and did not believe at the time that she was impaired as a result. However, claimant had been "under a lot of stress and hadn't been sleeping" around that time. Transcript at 22. Prior to departing from the winery, claimant did not believe that it would be unsafe for her to drive.

(5) As a result of the DUII charge, claimant's driver's license was temporarily suspended, and claimant was issued a temporary driving permit that was set to expire on March 19, 2024. Claimant was also issued a notice of a court hearing which would potentially allow her to extend the temporary permit beyond March 19, 2024. However, at the time, claimant was "going through a... horrible, stressful custody battle[.]" Transcript at 23–24. As a result, claimant was preoccupied with the "safety of [her] children," missed the notice of the hearing and the hearing itself, and was unable to extend the temporary driving permit. Transcript at 24.

(6) On March 18, 2024, claimant reported to the employer that she was scheduled to lose her driving privileges the next day. On March 19, 2024, claimant's driving privileges were revoked because of the license suspension and her failure to renew the temporary permit. Claimant reported this to the employer as well, and also informed them that she was attempting to get her driving privileges restored as quickly as possible.

(7) Over the course of the next several weeks, while the employer determined whether they would continue to employ claimant, claimant performed solely administrative duties which did not require her to drive anywhere. During that time, claimant requested to be transferred to a position which did not require a driver's license, but no such positions were available.

(8) On April 5, 2024, claimant attended a "pre-disciplinary meeting" with members of management and human resources to "present additional facts or mitigating factors regarding" claimant's loss of driving privileges. Exhibit 1 at 3. There, the employer informed claimant that because her driving privileges had been revoked and she was no longer able to fulfill the requirements of her position, the employer intended to discharge claimant unless she resigned before their next meeting, which had not yet been scheduled. Claimant understood that this pending discharge could happen "at any moment." Transcript at 18. Claimant also understood that being discharged would render her ineligible for rehire with the employer, and would jeopardize her Public Employees Retirement System (PERS) retirement benefits.

(9) On the morning of April 12, 2024, claimant received a notice from the employer that a meeting had been scheduled for later that morning. Claimant believed this to be the meeting in which the employer intended to discharge her. Claimant therefore notified the employer, approximately 30 minutes before the meeting was scheduled to start, that she was resigning effective immediately. Claimant resigned to avoid the consequences of being discharged.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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 work because the employer intended to discharge her in connection with her having lost her driving privileges following a DUII charge. As a preliminary matter, under OAR 471-030-0038(5)(b)(F), resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct does not constitute good cause for quitting. Therefore, it must be first determined whether the reason the employer intended to discharge claimant would have been misconduct. The record shows that it does not.

Potential 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). “[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). Under OAR 471-030-0038(3)(c), the willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

The employer intended to discharge claimant because she violated their requirement that she maintain a valid driver’s license. Claimant’s failure to do so was primarily the result of having crashed her vehicle and subsequently being charged with a DUII, as well as her failure to attend a court hearing at which claimant may have been allowed to temporarily extend her driving privileges. It should first be noted that while the employer required claimant to maintain a driver’s license, the record shows that a license was not necessary to the performance of her occupation of housing inspector. The record is silent as to why the employer required a driver’s license, it is inferred that the license requirement was imposed to ensure that the employer’s inspectors could travel to the properties they were to inspect more quickly and easily than by alternate means of transit. The requirement notwithstanding, the employer did not show that claimant could not have performed her job without a driver’s license. Indeed, claimant continued to work for the employer for nearly a month after her driving privileges were revoked, performing administrative work at the employer’s office. Because a driver’s license was not actually necessary for the performance of claimant’s occupation of housing inspector, the intended discharge is not analyzed under OAR 471-030-0038(3)(c).

The record also fails to show that claimant’s actions would have constituted a willful or wantonly negligent violation of the employer’s standards of behavior under OAR 471-030-0038(1)(c). As to the initial suspension of claimant’s driving privileges, the record shows that claimant had a single drink some time before departing the winery, and did not believe that it would be unsafe for her to drive. The record further shows that claimant had been sleep-deprived due to the stress of a custody battle. The record does not show that claimant’s BAC was above the legal limit. Therefore, while claimant may have been ordinarily negligent in driving while she was sleep-deprived, the record does not show, by a preponderance of the evidence, that claimant acted without regard for the consequences of her actions in

deciding to drive on the day of the accident. Thus, claimant's decision to drive that day did not constitute wanton negligence.

Similarly, while claimant was arguably negligent in failing to attend the court hearing that may have allowed her to extend her temporary driving privileges, the record does not show that this amounted to more than ordinary negligence. At the time, claimant was preoccupied with the "safety of [her] children," and missed the notice of her hearing as a result. This does not show that claimant failed to attend the hearing because she disregarded the consequences of her actions. Instead, it shows that she did so because a more pressing personal matter took precedence at the time. Thus, claimant's failure to attend the hearing that may have allowed her to extend her temporary driving privileges did not constitute a willful or wantonly negligent violation of the employer's standards of behavior.

Because claimant's failure to maintain her driving privileges, in violation of the employer's requirement that she do so, would not have constituted misconduct if the employer had discharged her for that reason, OAR 471-030-0038(5)(b)(F) does not bar a determination that claimant's decision to quit to avoid the discharge was for good cause.

Voluntary quit. Claimant's decision to quit was the result of her understanding that being discharged would render her ineligible for rehire with the employer, and would also jeopardize her PERS retirement benefits. The record suggests that claimant quit mere minutes before the employer intended to discharge her in a meeting they had called. The employer did not contradict claimant's assertions regarding the effects that a discharge would have on her re-employment prospects or her retirement benefits. These circumstances constituted a grave reason for quitting, as no reasonable and prudent person would continue to work for an employer when remaining employed, and being subsequently discharged, would result in such consequences. *See McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects); *Dubrow v. Employment Dep't.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Further, claimant had no reasonable alternative but to quit. The record shows that claimant attempted to transfer to a different position that did not require a driver's license, presumably to avoid being discharged for failing to have a license, but that no such positions were available. The record does not show that any other alternatives were available to claimant. Therefore, claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit work when she did.

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-263263 is affirmed.

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

DATE of Service: September 18, 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.

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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 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.

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