

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0629

Modified
Disqualification
Overpayment Increased

PROCEDURAL HISTORY: On May 28, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective April 28, 2024, and that claimant received benefits to which he was not entitled, and assessing an overpayment of \$2,409 in benefits that claimant was required to repay to the Department (decision # L0004326972).¹ Claimant filed a timely request for hearing. On August 2, 2024, ALJ Blam conducted a hearing, and on August 9, 2024, issued Order No. 24-UI-262126, modifying decision # L0004326972 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective April 28, 2024, and was overpaid \$2,409 in benefits that he was liable to repay only through deduction from future benefits.² On August 28, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

¹ Decision # L0004326972 stated that the disqualification was effective from April 29, 2024, to March 8, 2025. Decision # L0004326972 at 1. However, as benefit weeks begin on Sundays and April 29, 2024, was a Monday, and disqualifications continue indefinitely until a claimant earns sufficient wages to requalify pursuant to ORS 657.176(2), it is presumed that the Department intended that the disqualification be effective April 28, 2024.

² Although Order No. 24-UI-262126 stated that it affirmed decision # L0004326972, it modified that decision by changing the applicable statute governing recovery of the overpayment from ORS 657.310(1) to ORS 657.315(1). Order No. 24-UI-262126 at 5. Though the order stated that claimant “is liable for repayment or deduction from future benefits to the Department for [the overpayment] as under ORS 657.310,” this is presumed to be a scrivener’s error as the order concluded that “[t]he overpayment was not due to claimant fault, so claimant may not be required to repay the benefits.” Order No. 24-UI-262126 at 5.

FINDINGS OF FACT: (1) Mid Valley Processing, LLC employed claimant, primarily as a butcher, from November 6, 2023, until April 29, 2024.

(2) Claimant was working part-time for another employer at the time claimant began working for the employer. Claimant and the employer intended that claimant would eventually quit the other employment and begin working for the employer full-time. Claimant quit the other employment in late November 2023. The employer made full-time work available to claimant thereafter.

(3) The employer wanted claimant to engage in full-time butcher work during customary business hours. However, claimant was unavailable to work customary business hours due to childcare and transportation issues and was therefore offered some butcher work and some odd job work totaling 40 hours, to be performed at times when claimant was available, including outside of customary business hours. Claimant typically performed less than the 40 hours of work offered each week because he was available fewer than 40 hours despite the flexible scheduling.

(4) On March 11, 2024, claimant filed an initial claim for unemployment insurance benefits. Claimant intended to convey to the Department that he was still working for the employer but that he was seeking benefits because he was working less than full-time and making less than his weekly benefit amount. Claimant ultimately conveyed this information to the Department by March 27, 2024. The claim was deemed monetarily valid with a weekly benefit amount of \$803.

(5) Claimant claimed benefits for the weeks including March 10, 2024, through March 16, 2024 (week 11-24) and April 28, 2024, through May 18, 2024 (weeks 18-24 through 20-24), and was paid \$803 in benefits for each week, totaling \$3,212. These are the weeks at issue. Week 11-24 was the first week in which benefits were claimed and no other week of the claim was designated as a waiting week.

(6) On April 22, 2024, the Department notified the employer of claimant's claim. The employer did not understand why claimant filed the claim, as they had been offering him full-time work since November 2023. The employer's two owners called claimant into a meeting to ask about the claim at the only private space in the employer's facility, a small room used for storing or applying spices. Claimant felt "closed in" while in the room and one of the owners told claimant that his claim "was a fraudulent case and that [claimant] was lying, and that [the employer] would pursue it as a fraudulent case. . . if anything further came of it." Transcript at 7-8. Claimant then explained to the owners why he had filed the claim.

(7) Claimant believed the interaction constituted "aggressive behavior" and he "didn't feel safe" or that he "could stay there any longer than [he] had to" based on how the owner "was addressing the situation." Transcript at 8. Claimant therefore "decided to put in [his] notice" and told that owner that he was going to "find other work." Transcript at 8. Claimant intended to work an additional two weeks, but the owner asked if he would agree to work only until April 29, 2024, to simplify payroll. Claimant agreed and gave the employer written notice of his resignation later that day, stating that it would become effective on April 29, 2024.

(8) On April 29, 2024, claimant stopped working for the employer as anticipated. Claimant promptly reported the work separation to the Department as a voluntary leaving.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause. Claimant was overpaid \$3,212 in benefits that he is liable to repay through deduction from future benefits.

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).

Claimant told the employer on April 22, 2024, that he was leaving to seek other work, and that he intended that his resignation become effective two weeks later. The employer responded that April 29, 2024, would be a more convenient last day for payroll purposes, and claimant agreed to that date, which he then wrote in his resignation letter. Exhibit 1 at 51. Though claimant was initially willing to continue working for the employer for an additional period of time beyond April 29, 2024, claimant agreed to stop working on that date per the employer's request. As the record shows that this date was selected by agreement rather than being imposed on claimant over his objection, the work separation is a voluntary leaving that occurred on April 29, 2024. *See J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990).

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). "[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 confronted him after learning that he filed a claim for unemployment insurance benefits in March 2024 and was continuing to claim benefits on the basis of working less than full-time. Though claimant told the employer immediately following the confrontation that he was quitting to seek other work, claimant testified that this confrontation, rather than a desire to seek other work, prompted his decision to resign. Transcript at 6, 8. Claimant explained that he felt that he could not continue working for the employer "longer than [he] had to" after the confrontation because he was "at risk" and "just didn't feel safe." Transcript at 7-8. Claimant cited "the demeanor of [the] owner" and that claimant's "job requires a lot of stress and a lot of focus, working around knives and heavy equipment" and claimant "did not feel like [he] could trust the people around [him]." Transcript at 6.

The record does not show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded from these circumstances that they could not continue working for the employer because their physical safety was threatened. There is no suggestion that claimant was aware of the owner having made a threat of violence against him or any other employee, or having engaged in such threats or violence in the past. Further, the record does not suggest any reason why employer would intentionally fail to keep claimant safe from workplace hazards simply because they

suspected that claimant provided false information to the Department to obtain benefits. To the extent claimant believed he might unintentionally injure himself due to a lack of focus caused by concern over what the employer might tell the Department about his claim, that claimant was willing to work an additional two weeks for the employer significantly undermined his assertion that he had reason to fear physical injury of any kind. Therefore, claimant has not shown that he faced a situation of such gravity that no reasonable and prudent person would continue working under the circumstances. Accordingly, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 29, 2024.

Week 11-24 overpayment. ORS 657.155 provides, in relevant part:

(1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director of the Employment Department finds that:

* * *

(d) The individual has been unemployed for a waiting period of one week, unless the Governor has waived the required waiting period as provided in ORS 401.186.

* * *

ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

The Department's representative testified that claimant filed his initial claim for benefits on March 11, 2024, and that the first week of benefits claimed was for week 11-24. Transcript at 35, 37. Claimant was paid \$803 in benefits for week 11-24. However, pursuant to ORS 657.155(1)(d), claimant was not entitled to receive benefits for week 11-24 as it constituted the required waiting week. The Department's representative explained that a system error was "causing the waiting week to inadvertently pay out to claimants." Transcript at 38. Therefore, the Department paid claimant \$803 in benefits to which he had not been entitled, due to an error he had not caused. Accordingly, claimant is liable to repay \$803 in overpaid benefits for week 11-24 only through deduction from future benefits as provided in ORS 657.315(1).

Overpayment for weeks 18-24 through 20-24. The order under review concluded that claimant was disqualified from receiving unemployment insurance benefits effective April 28, 2024 (week 18-24) as a result of the work separation, that he remained disqualified through at least week 20-24, and that he was paid \$803 in benefits to which he was not entitled as a matter of law for each of these three weeks and is

liable to repay through deduction from future benefits.³ Order No. 24-UI-262126 at 2, 4-5. The record supports these conclusions.

However, the order under review incorrectly concluded that the total overpayment, including that for the waiting week (week 11-24), was \$2,409. Order No. 24-UI-262126 at 5. Including the waiting week and the three weeks affected by the work separation disqualification, claimant was overpaid \$803 for each of four weeks: 11-24, 18-24, 19-24, and 20-24. \$803 times four equals \$3,212, the total amount claimant was overpaid and is liable to repay through deduction from future benefits.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 29, 2024. Claimant was overpaid \$3,212 in benefits that he is liable to repay only through deduction from future benefits.⁴

DECISION: Order No. 24-UI-262126 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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³ The Department’s representative testified that claimant accurately reported the work separation as a voluntary leaving and, despite the conclusions stated in decision # L0004326972, the overpayment was determined not to have been caused by claimant and recovery was therefore governed by ORS 657.315(1). Transcript at 40.

⁴ The Department’s representative testified that recovery of the overpayment was fully waived. Transcript at 40. The Department’s records show that the waiver was applied to the entire overpayment amount of \$3,212. EAB’s decision does not affect this waiver and claimant is no longer liable to repay those benefits.



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

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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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