EO: Intrastate
BYE: 02-Aug-2025

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-0678

Reversed & Remanded

PROCEDURAL HISTORY: On August 23, 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 August 4, 2024 (decision # L0005761971).[1] Claimant filed a timely request for hearing. On September 18, 2024, ALJ Janzen conducted a hearing at which the employer[2] failed to appear, and on September 19, 2024, issued Order No. 24-UI-266674, modifying decision # L0005761971 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective March 31, 2024. On September 23, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) DND Pacific, Inc. employed claimant as a general manager until March 31, 2024. The employer operated several Dairy Queen franchises in the Portland and Salem areas.

(2) At all times relevant to this decision, the employer lacked a district manager to oversee its multiple stores. The employer had only one other general manager on staff, and that manager was in training. As such, claimant was broadly responsible for the operations of five stores. Claimant's position was intended as 50 hours per week. However, claimant typically worked between 60 and 70 hours per week, and often commuted between her home and the various locations in the Portland and Salem areas.

(3) In or around March 2023, claimant's son was murdered.

[1] Decision # L0005761971 stated that claimant was denied benefits from August 4, 2024, to August 2, 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 August 4, 2024, and until she earned four times her weekly benefit amount in subject employment.

[2] As explained below, there is some question in the record as to whether DND Pacific, Inc. is the correct employer of record for this separation. For the sake of clarity, however, references to "the employer" in this decision, unless otherwise noted, refer to DND Pacific, Inc.

(4) Claimant had a contentious relationship with some members of upper management, including the employer's operations manager. In particular, claimant felt that she was regularly "getting yelled at for things that [weren't her] fault." Transcript at 6.

(5) In March 2024, as the one-year anniversary of her son's death approached, claimant and her remaining children were having "breakdowns" due to their grief. Transcript at 5–6. Claimant's long working hours, her grief, and antagonism from upper management caused her to have a difficult time getting out of bed, and to feel "closed in," like she "would not be able to do [her] job properly." Transcript at 6. Claimant also frequently cried during this time as a result of these combined stressors. Claimant did not seek treatment for these mental health issues because she had previously been able to "work through it" and "didn't even have time for [herself] whatsoever." Transcript at 10.

(6) On March 31, 2024, the operations manager called claimant and criticized her for failing to properly train the other general manager, based on a statement that the other general manager had made to the operations manager. Claimant explained that she had actually trained the other general manager properly, but the operations manager "kept yelling at" claimant while claimant cried. Transcript at 9. Claimant continued to be upset after the phone call ended. Shortly thereafter, claimant sent the employer an email notifying them that she "couldn't work anymore." Transcript at 9.

(7) On April 1, 2024, claimant flew from Oregon to Texas to help her sister regain custody of her sister's three minor children. Claimant's sister had been arrested prior to this, and claimant "had to go and help them get back together and into their apartment when [claimant's sister] was released" from incarceration. Transcript at 12. Claimant and her sister had no other family who could assist in this matter. Claimant returned to Oregon on April 6, 2024.

(8) On April 7, 2024, after claimant had returned to Oregon, she asked the employer if she could return to work for them, but the employer refused. Claimant did not request time off from work prior to leaving for Texas because she had never seen the employer approve an employee's vacation request previously, and believed that the employer would deny any such request she made because they were short on managers.

CONCLUSIONS AND REASONS: Order No. 24-UI-266674 is set aside and this matter remanded for further development of the record.

Notice to the correct employer and identification of correct work separation. ORS 657.265 states:

> When a claimant files an initial claim or an additional claim, the Employment Department promptly shall give written notice of the claim filing to the claimant's most recent employing unit or agent of the employing unit. If the claimant did not receive or will not receive remuneration from qualifying employment, as described in ORS 657.176, in an amount greater than or equal to four times the claimant's weekly benefit amount from the claimant's most recent employing unit, the Employment Department shall notify the claimant's next previous employing unit or units or agents of the employing unit or units until the Employment Department has notified all of the claimant's former employing units, or the agents of the employing units, that, in the aggregate, have paid or will pay the claimant remuneration from qualifying employment, as described in ORS

> 657.176, in an amount that is equal to or exceeds four times the claimant's weekly benefit amount.

ORS 657.267 states, in relevant part (emphasis added):

> (1) An authorized representative shall promptly examine each claim for waiting week credit or for benefits and, on the basis of the facts available, make a decision to allow or deny the claim. Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. Notice of the decision need not be given to the claimant if the claim is allowed but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.
>
> (2) ***If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit***, or to the agent of the employing unit, ***that***, in the opinion of the Director of the Employment Department, ***is most directly involved with the facts and circumstances relating to the disqualification***.

OAR 471-040-0015 (August 1, 2004) states, in relevant part (emphasis added):

> (1) To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director.
>
> (2) ***The following parties shall be notified of a hearing*** when a request for hearing has been filed as provided by ORS 657.265 or 657.355:
>
> > (a) The Director;
> >
> > (b) The claimant;
> >
> > (c) ***The employing unit entitled to notice of the determination or decision under ORS 657.265***; and any employing unit that could be expected to have information relating to the issue(s) of the hearing.

The employer of record in this matter is listed as DND Pacific, Inc. Both decision # L0005761971 and Order No. 24-UI-266674 were mailed to this employer at their address on file with the Department. However, there are several inconsistencies in the record which cast doubt as to whether DND Pacific,

Inc. was the employer from whom claimant separated in March 2024, and as to whether that separation was the correct, or only, one to adjudicate.

First, decision # L0005761971 itself indicated that claimant worked for DND Pacific, Inc. until November 1, 2023, and quit because she "had a family emergency." Despite finding that claimant had worked for the employer until November 1, 2023, however, the administrative decision disqualified claimant from benefits effective August 4, 2024. The separation adjudicated at hearing took place on March 31, 2024, however, and close in time to circumstances that could be considered the "family emergency" mentioned in the administrative decision.

This confusion is compounded by the fact that claimant reportedly worked for several different corporations, all apparently under the auspices of the same parent company, but each operating a different store or group of stores in different areas. At hearing, claimant testified that she had transferred from the employer's Keizer store, under "DND Group," on November 1, 2023, thereafter, moving to the Garden Home store under an employer called "Toppenish." Transcript at 16. Claimant further stated that she later transferred to a store in Silverton under "Silverton Group." Transcript at 16. The Department's records indicate that claimant had wages from employers with names approximately matching claimant's testimony, as well as a fourth employer seemingly associated with those groups, in 2023 and 2024. However, it is not clear when claimant moved between these stores or which store she was primarily working at when she separated from work on March 31, 2024. As such, the record as developed is insufficient to show whether the correct employer was notified of the claim or the hearing on decision # L0005761971.

Additionally, it is not clear whether claimant ever returned to work for any of these employers after March 31, 2024. Given that decision # L0005761971 discussed a work separation resulting in a disqualification starting in August 2024, it is necessary to determine whether the correct work separation was actually adjudicated.

On remand, the ALJ should make inquiries to resolve the questions outlined above. The Department should produce a representative to testify who is knowledgeable about the various employers who reported wages for claimant in 2023 and 2024, and who may be able to shed light on whether DND Pacific, Inc. is the correct employer in this case and, if not, who the correct employer or employers in this case are.

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 quit work on March 31, 2024 "because she was experiencing stress in her personal and professional lives." Order No. 24-UI-266674 at 2. The order concluded that claimant did so without good cause because she failed to pursue reasonable alternatives prior to voluntarily leaving work. Order No. 24-UI-266674 at 2. As noted above, the record requires further development to determine whether the correct employer or employers were placed on notice of this matter, as well as whether the correct separation or separations were adjudicated. Those concerns aside, the record as developed is insufficient to determine whether claimant had good cause to quit work on March 31, 2024.

First, despite the fact that claimant traveled to Texas to help with an urgent family matter the day after she quit, no inquiry was made as to whether this situation contributed to claimant's decision to quit, nor was it discussed in the order under review. On remand, the ALJ should inquire as to whether the matter with claimant's sister and her children contributed to claimant's decision to quit on March 31, 2024. If it did, the record should be further developed to determine whether this constituted good cause for quitting. In particular, the ALJ should inquire as to when claimant's sister was initially arrested, when claimant learned of this fact, when claimant's sister was released from custody, and how claimant's assistance was required throughout the ordeal. Additionally, to determine whether claimant had reasonable alternatives to quitting for that reason, the ALJ should inquire as to whether claimant had ever seen the employer refuse to grant an employee leave for medical or family reasons (as opposed to refusing to grant employees time to take a vacation), and whether claimant notified the employer of the matter with her sister. The ALJ should also ask questions to develop whether the employer had made comments discouraging employees from taking vacation or otherwise chilling use of employee vacation time.

To the extent that claimant quit because of the stress she was experiencing at work, further inquiry is also necessary. To that end, the ALJ should inquire as to whether claimant could have requested to work fewer hours, spoken to anyone with the ability to intervene (such as the owners or a human resources department) about what she felt was mistreatment by the operations manager or others, or taken any other steps to mitigate her work stress or the effects she suffered as a result.

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 the correct employer was placed on notice, whether the correct separations were adjudicated, and whether claimant had good cause to quit work, Order No. 24-UI-266674 is reversed, and this matter is remanded.

DECISION: Order No. 24-UI-266674 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 18, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-266674 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.

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