EO: Intrastate
BYE: 30-Aug-2025

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

419
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0744

Reversed & Remanded

PROCEDURAL HISTORY: On September 19, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective September 1, 2024 (decision # L0006197226).[1] Claimant filed a timely request for hearing. On October 15, 2024, ALJ Contreras conducted a hearing, and on October 18, 2024, issued Order No. 24-UI-270002, reversing decision # L0006197226 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On October 22, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument, which was the request for review, in reaching this decision.

The parties may offer new information into evidence at the remand hearing. Such information may include the service site visit sign-in sheets claimant filled in; claimant's "EC web" logs documenting her site visits; claimant's notebooks, field notes, working files and/or Outlook calendar entries relating to her site visits; any training materials claimant received relating to proper service log documentation; and the employer's investigative materials and any documents specifying their findings and recommendations. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

[1] Decision # L0006197226 stated that claimant was denied benefits from September 1, 2024 to August 30, 2025. However, decision # L0006197226 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 9, 2024, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

FINDINGS OF FACT: (1) Willamette Education Service District employed claimant as an early intervention specialist from August 2022 until June 12, 2024.

(2) As an early intervention specialist, claimant was to provide services to preschool age children with special needs. Claimant traveled to the service sites, such as head starts or preschool programs, to provide services to the students. The service sites had sign-in sheets that claimant was to fill in when she arrived and when she left. Claimant documented the length of the site visits and what occurred during the visits in her notebooks. Later, claimant would document the length of each site visit and what occurred during the visit in the employer's computer logs using a program called "EC web." Transcript at 46.

(3) Claimant's job was subject to a three-year probationary period. Claimant signed a contract each year. Although claimant's contract for the 2023-2024 school year was scheduled to end on June 12, 2024, the employer would consider her to remain in an employment relationship after that date.

(4) The employer expected claimant to accurately document the time she spent providing services to students in the employer's logs. Claimant was subject to numerous expectations including policies regarding safekeeping of the records of students with disabilities and policies regarding competent educator management skills. Claimant received and read the employer's policy handbook.

(5) One of the sites where claimant provided services was the Salem-Keizer preschool program. In February 2024, an individual who worked in that program made a complaint about claimant asserting that the amount of time claimant spent providing services to a special needs child was less than the amount of time reflected in claimant's logs.

(6) In early May 2024, the employer began investigating the complaint. The investigation involved witness interviews and review of claimant's service logs, Outlook calendar, field notes, and working files. The investigation uncovered evidence that led the employer to believe that claimant had engaged in inaccurate service log reporting for several children across multiple service sites extending beyond the Salem-Keizer preschool program.

(7) At one site, claimant's service logs showed that claimant had made 25 visits during the applicable timeframe, when, based on their investigation, the employer concluded that claimant had made only two visits to the site. At a second site, claimant's service logs showed that she had made 14 visits during the applicable timeframe, but the employer concluded that claimant had made only two visits to the site, based on their investigation. At a third site, claimant's service logs showed that she had made 20 site visits during the applicable timeframe, but, based on their investigation, the employer concluded that claimant had visited the site only five times. Based on the investigation, the employer concluded that up to eleven special needs children were deprived of an estimated 23 hours of services that claimant was supposed to have provided to them.

(8) On June 11, 2024, claimant had a final meeting with the employer regarding the investigation, and at that time, the employer provided claimant with their findings and recommendations. Pursuant to the recommendations, claimant was to have a pre-termination hearing before the district superintendent. Claimant consulted with her union representative about the matter. The union representative told

claimant that in her experience, probationary employees like claimant were always discharged following a pre-termination hearing.

(9) Claimant believed that discharge was imminent because she was a probationary employee and had been recommended for a pre-termination hearing. Claimant believed that with a discharge in her personnel file, "it would be hard for [her] in the future to find a job in education." Transcript at 10.

(10) On June 11, 2024, claimant tendered a letter to the employer giving notice of her intent to resign the next day, June 12, 2024. On June 12, 2024, claimant quit working for the employer, as planned.

(11) While claimant's contract for the 2023-2024 school year was set to end on June 12, 2024, had claimant not resigned that day, claimant would have remained an employee of the employer with claimant going "into summer break like she normally would have." Transcript at 30. Thereafter, "the process would have begun in terms of the recommendation for pre-termination." Transcript at 30. Although whether to discharge claimant would be the superintendent's decision to make following the pre-termination hearing, had claimant not resigned from her position, the employer's director of human resources would have recommended to the superintendent that claimant be discharged. The director of human resources felt the employer "could not settle on anything less" given that she believed claimant had engaged in "serious misconduct." Transcript at 31.

CONCLUSIONS AND REASONS: Order No. 24-UI-270002 is set aside, and this matter remanded for further proceedings consistent with this order.

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.

Per OAR 471-030-0038(5)(b), leaving work without good cause includes:

> * * *
>
> (F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;
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> * * *

The order under review concluded that claimant voluntarily left work with good cause. Order No. 24-UI-270002 at 4. It concluded that this was the case because, under *McDowell v. Employment Dep't*., 348 Or 605, 236 P3d 722 (2010), claimant quit work to avoid being discharged, not for misconduct, and the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects.

Order No. 24-UI-270002 at 4. There is sufficient record evidence to conclude that, had she not quit, claimant faced an imminent discharge that would impair her future job prospects. However, the record as developed does not support the conclusion of the order under review that claimant left work with good cause. Further development of the record is necessary to determine whether the discharge claimant would have faced had she not quit would have been for misconduct. If, on remand, the record shows that the discharge would have been for misconduct, OAR 471-030-0038(5)(b)(F) would apply, and claimant would be deemed to have quit work without good cause.

As an initial matter, the record as developed is sufficient to conclude that, had claimant not quit, she would have faced an imminent discharge that would impair her future job prospects. A discharge was imminent because claimant would have remained employer-attached and a pre-termination hearing would have occurred, the employer's director of human resources planned to recommend discharge to the superintendent, and probationary employees such as claimant typically were discharged following pre-termination hearings. A discharge would have impaired claimant's future job prospects because claimant believed that with a discharge in her personnel file, "it would be hard for [her] in the future to find a job in education." Transcript at 10. This is supported by the testimony of the employer's director of human resources who stated that the employer "likely would not . . . pursue an interview" with an individual "that had this on their record." Transcript at 32. Since the employer was an education service district, the view expressed by the director of human resources bolsters the conclusion that a discharge would have hindered claimant's ability to find future work in the education field.

Because of these facts, it may be warranted to apply the holding of *McDowell v. Employment Dep't*., 348 Or 605, 236 P3d 722 (2010) and conclude that claimant left work with good cause. However, if claimant's imminent discharge would have been for misconduct, then claimant resigned to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. Under OAR 471-030-0038(5)(b)(F), quitting under those circumstances is leaving work without good cause. Therefore, further development of the record is needed to determine whether claimant's discharge would have been for misconduct.

On remand, the ALJ should develop the record regarding certain details of claimant's job. The ALJ should confirm that claimant provided services to 40 pre-school students, and inquire about the types of special needs the children had, the nature of the services claimant provided and the frequency, how many different sites claimant visited, and whether others supervised claimant's provision of services. The ALJ should inquire about aspects of claimant's routine during visits, such as whether claimant was allowed to take handwritten notes only and on what basis claimant understood that to be the case, as well as how often during visits claimant could not find a site's sign-in sheets, and, when that occurred, what steps claimant took to ensure the sign-in times for her visits to the site were accurate and complete.

The ALJ should also ask questions to develop the record regarding the employer's expectations. The ALJ should confirm that claimant knew and understood that she was expected to accurately document the time she spent providing services to the students in the employer's logs. The ALJ should ask questions to develop precisely what information claimant was required to enter into the employer's "EC web" log for each visit, such as whether she was expected to specify the start and end times of each visit. Transcript at 46. The ALJ should ask questions to develop what training claimant had received on accurately making note of the length of her service visits in her own notes, as well as on properly entering the required information in the EC web log. And, given that claimant was in the second year of

a three-year probationary period, whether she had ever previously been warned or coached for not logging visits properly and whether claimant had changed the way she logged visits and services performed had changed.

Next, the ALJ should ask questions to develop the record regarding the employer's investigation and the information uncovered during it. The ALJ should ask questions to develop the applicable timeframe for which the employer reviewed claimant's service logs and determined that they did not match site sign-in sheets, such as whether the period under review was between February and June 2024 or extended to the beginning of claimant's employment in August 2022. The ALJ should make inquiries about the scope and circumstances of the February 2024 complaint that initiated the employer's investigation. The ALJ should ask questions to develop the record as to whether the investigation found patterns such as claimant was not going to a particular site or not seeing a particular child, and whether the employer determined that visits were skipped entirely or were simply cut short.

The ALJ should inquire of the parties about each instance the employer determined that claimant had represented that she had provided services but failed to do so, ask what information led the employer to draw that conclusion, and provide claimant an opportunity to provide rebuttal testimony. To this end, if they are offered and admitted into the record on remand, the ALJ should review and ask questions about the service site visit sign-in sheets that claimant filled in, claimant's "EC web" logs documenting her site visits, and claimant's notebooks, field notes, working files and/or Outlook calendar entries relating to her site visits.

At hearing, claimant denied falsifying service log records. Transcript at 17. Claimant complained of lacking appropriate training and admitted to making some mistakes, but stated that she could not think specifically of any recordkeeping mistakes and described her mistakes in general terms as missing paperwork or failing to update her email calendar. Transcript at 19. The ALJ should make inquires to clarify that the nature of the discrepancies were that claimant's logs that she entered in EC web showed more service visits were made than were reflected in the sites' sign-in sheets. If this was the case, the ALJ should ask how a lack of training, missed paperwork, or outdated calendar entries could be responsible for the discrepancy between the sign-in sheets and logs and whether claimant's own notes could corroborate that claimant had been present providing services. The ALJ should ask questions to develop concretely what mistakes claimant believed she had made, to provide details as to what she struggled with and what training she believed she required, and how the service log discrepancies could be attributable to lack of appropriate training when claimant had been in the role for over a year when the matters came to light.

Note that the parties may offer documentary information at the remand hearing, such as the service site visit sign-in sheets claimant filled in; claimant's "EC web" logs documenting her site visits; claimant's notebooks, field notes, working files and/or Outlook calendar entries relating to her site visits; any training materials claimant received relating to proper service log documentation; and the employer's investigative materials and any documents specifying their findings and recommendations, among others. Such documentary information may be of assistance at the remand hearing. At the remand hearing, the ALJ will determine whether any such new information will be admitted into the record.

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 claimant resigned to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct, Order No. 24-UI-270002 is reversed, and this matter is remanded.

DECISION: Order No. 24-UI-270002 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 20, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-270002 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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