

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0768

Modified ~ Disqualification ~ Overpayment

Modificada ~ Descalificación ~ Sobrepago

Este documento incluye información importante que no ha sido traducida al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-378-2077 para obtener servicios de traducción gratuitos.¹

PROCEDURAL HISTORY: On June 7, 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 May 12, 2024, that she received benefits to which she was not entitled, and assessing an overpayment of \$684 that claimant was liable to repay to the Department (decision # L0004427628). Claimant filed a timely request for hearing. On October 16, 2024, ALJ Frank conducted a hearing, interpreted in Spanish, at which the employer failed to appear, and on October 24, 2024 issued Order No. 24-UI-270627, modifying decision # L0004427628 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective May 5, 2024, and assessing an overpayment of \$684 that claimant was liable to repay to the Department.² On October 30, 2024, claimant filed an application for review of Order No. 24-UI-270627 with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 7 de junio de 2024, el Departamento de Empleo de Oregon (el Departamento) notificó una decisión administrativa que concluía que la reclamante dejó*

¹ This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-378-2077 to obtain free translation services.

² Although Order No. 24-UI-270627 stated it affirmed decision # L0004427628, it modified that decision by changing the beginning date of the disqualification from May 12, 2024 to May 5, 2024. Order No. 24-UI-270627 at 4.

Aunque la Orden No. 24-UI-270627 dijo que confirmó la decisión # L0004427628, la orden modificó la decisión # L0004427628 porque la orden cambió la fecha de inicio de la descalificación del 12 de mayo de 2024 al 5 de mayo de 2024. Orden No. 24-UI-270627 en página 4.

voluntariamente al trabajo sin una buena causa y, por lo tanto, estaba descalificada para recibir beneficios del seguro de desempleo a partir del 12 de mayo de 2024, que recibió beneficios a los que no tenía derecho, y impuso un sobrepago de \$684 que la reclamante estaba obligada a reembolsar al Departamento (decisión # L0004427628). La reclamante presentó una solicitud de audiencia a tiempo. El 16 de octubre de 2024, juez de la ley administrativa (ALJ) Frank llevó a cabo una audiencia, interpretada en español, en la que el empleador no participó, y el 24 de octubre de 2024 emitió la Orden Judicial No. 24-UI-270627, modificando la decisión # L0004427628 al concluir que la reclamante dejó voluntariamente al trabajo sin causa justificada y fue descalificada para recibir beneficios a partir del 5 de mayo de 2024, y impuso un sobrepago de \$684 que la reclamante estaba obligada a reembolsar al Departamento. El 30 de octubre de 2024, la reclamante presentó una solicitud de revisión de la Orden Judicial No. 24-UI-270627 ante la Junta de Apelaciones Laborales (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant’s written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

ARGUMENTO POR ESCRITO: *EAB no consideró el argumento por escrito de la reclamante porque ella no incluyó una declaración confirmando que ella le envió una copia del argumento a las otras partes de acuerdo con regla legal OAR 471-041-0080(2)(a) (13 de mayo de 2019).*

FINDINGS OF FACT: (1) Five Star Laundry – Portland, LLC employed claimant in production finishing from June 9, 2022 until May 9, 2024.

(2) At hire, claimant worked five days per week and eight hours per day. In approximately July 2023, the employer began reducing claimant’s hours to 28 to 30 per week over four days. Claimant worked these hours through May 2024, despite her desire to work full-time. Claimant did not seek full-time work from other employers. As of May 2024, claimant was paid \$19.00 per hour.

(3) Claimant’s work commute typically lasted 15 minutes to work and 45 minutes from work, due to traffic variations.

(4) On Monday and Tuesday, May 6 and 7, 2024, the employer sent claimant home prior to the scheduled end of her shifts due to a lack of work. On May 8, 2024, claimant told her supervisor that she had to leave early due to an appointment and the employer allowed her to leave early. On May 9, 2024, claimant had been scheduled to work but when she arrived at work was told that she was not scheduled to work, and was sent home. Claimant attributed this schedule change to a miscommunication between supervisors.

(5) After being sent home on May 9, 2024, claimant gave notice that she was quitting work and did not work for the employer thereafter. Claimant quit because she believed that her hours were being reduced so that workers with less seniority but who were younger and of a different religion and ethnicity than claimant could have the work.

(6) On May 13, 2024, claimant filed an initial claim for unemployment insurance benefits by telephone. Claimant was asked to characterize the work separation but did not state that it was a voluntary leaving.

The Department's representative did not allow claimant to fully explain the circumstances leading to the work separation, though claimant attempted to do so.

(7) The Department determined that claimant's claim was monetarily valid with a weekly benefit amount (WBA) of \$342. Claimant thereafter claimed benefits for the weeks of May 12, 2024 through June 1, 2024 (weeks 20-24 through 22-24), and was paid \$342 in benefits for each of the latter two weeks (weeks 21-24 and 22-24). Weeks 21-24 and 22-24 are the weeks at issue. Claimant did not have any earnings from May 12, 2024 through June 1, 2024.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause. Claimant was overpaid \$684 in benefits that she is liable to repay to the Department through deduction from future benefits.

CONCLUSIONES Y RAZONES: *La reclamante renunció voluntariamente al trabajo sin causa justificada. A la reclamante se le pagaron en exceso \$684 en beneficios que ella está obligada a reembolsar al Departamento a través de la deducción de beneficios futuros.*

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.

A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant quit work due to a reduction in hours. Claimant initially worked 40 hours per week, then ten months prior to the work separation, the employer reduced her hours to 28 to 30 per week. During the week of May 6, 2024, claimant was twice sent home before the scheduled end of her shift, left early once for a personal appointment, and was not allowed to work at all on the fourth day. It is unclear from the record whether the early dismissals on the first two days of the week were likely to recur in future weeks. It is also unclear why claimant's schedule was abruptly changed without notice with regard to the fourth day or whether this would recur, though the record suggests it may have had something to do with claimant's request for time off the previous day and may have been the result of a supervisor's error. *See* Transcript at 26.

Claimant did not assert that she had been seeking full-time work other than from the employer, and therefore did not show that continuing to work part time substantially interfered with her returning to full-time work. Further, claimant had a total commute time of about one hour per work day, and did not assert that she had other expenses from working. It can therefore reasonably be inferred from her \$19.00 hourly rate of pay that the cost of working, such as fuel costs for her commute, did not exceed the

amount of remuneration she received from working part time. Therefore, although claimant was understandably frustrated by the unexpected reduction in work hours during her final week of employment, this did not constitute good cause for quitting work under OAR 471-030-0038(5)(e).

However, if the reduction in hours was the result of unlawful discrimination, this may have constituted a grave situation. Claimant asserted that the employer “didn’t want [her] anymore to work longer hours” and testified, “I think it was due to my old age.” Transcript at 17. Claimant also described one of the supervisors as “very racist” and implied that he was of a different religion than claimant, further explaining, “[H]e only has [people of the same religion] working in the area and I had been the only Hispanic person that had worked over a year.” Transcript at 23. The record does not otherwise reveal why claimant believed this supervisor to be “very racist” and did not establish that he was directly involved in the reduction of claimant’s hours. Claimant’s suggestion that the reduction in hours may have been the result of discrimination based on age, religion, or ethnicity was therefore only speculative and not supported by a preponderance of the evidence. Therefore, claimant has not met her burden of showing that she faced a grave situation because of unlawful discrimination. Accordingly, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual’s knowledge or intent. ORS 657.310(1).

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.

Claimant was paid \$342 in benefits for each of the two weeks at issue, totaling \$684. Because claimant was disqualified from receiving benefits effective May 5, 2024, and the record does not show that she had sufficient earnings to requalify prior to or during the weeks at issue, she was not entitled to receive those benefits and was overpaid.³ The order under review concluded that claimant failed to communicate accurate information regarding her work separation when filing her initial claim, thereby causing the overpayment. Order No. 24-UI-270627 at 4. The record does not support this conclusion.

The Department’s representative asserted at hearing that the overpayment was caused by claimant failing to disclose that she “quit work because of unknown reasons.” Transcript at 6. The representative was asked to clarify whether claimant “failed to disclose her voluntary leaving to the Department,” to which the representative responded in the affirmative. Transcript at 6. The representative did not state

³ ORS 657.176(2) states, “An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment . . . for which remuneration is received that equals or exceeds four times the individual’s weekly benefit amount subsequent to the week in which the act causing the disqualification occurred[.]”

precisely how claimant characterized the work separation when filing her claim. Claimant testified that she did not remember how she characterized the work separation when filing her claim, but stated, “I did want to give my explanation . . . [and] they didn’t allow me to give my explanation.” Transcript at 12.

The Department failed to show by a preponderance of the evidence that the overpayment was caused by claimant mischaracterizing or failing to disclose material details concerning the work separation. The record suggests that when claimant was presented with options to characterize the separation, she did not select the option to indicate it was a voluntary leaving. However, the record shows that regardless of claimant’s opinion on the legal characterization of the separation, she attempted to fully describe the circumstances of the separation in such a way that the Department should have known that it was potentially disqualifying. For these reasons, the Department has not met their burden of showing that the overpayment was caused by claimant making or causing to be made a false statement or misrepresentation of a material fact, or failing to disclose a material fact. Recovery of the overpayment is therefore governed by ORS 657.315(1). Accordingly, claimant is liable to repay \$684 in overpaid benefits through deduction from future benefits.

DECISION: Order No. 24-UI-270627 is modified, as outlined above. *La Orden Judicial No. 24-UI-270627 ha sido modificada, como se indicó anteriormente.*

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

DATE of Service: December 6, 2024

FECHA de Servicio: 6 de diciembre de 2024

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments> or call 503-947-1995.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/Form129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online:** Log in to your Frances Online account and use “Send a Message”
- **Use the Contact Us form online at:** unemployment.oregon.gov/contact
- **Email:** UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **U.S. Mail:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

NOTA: El Departamento puede dar una dispensa a la recuperación o renunciar por completo al sobrepago si se cumplen ciertos estándares. Si solicita pero no califica para una dispensa o perdón, es posible que haya otro alivio disponible, como pausar temporalmente los esfuerzos de cobro o limitar las reducciones de los beneficios actuales. Es importante solicitar una dispensa o perdón lo antes posible porque una dispensa o perdón no es retroactivo. **Para obtener más información sobre cómo solicitar una dispensa o perdón de sobrepago, visite <https://unemployment.oregon.gov/overpayments> o llame al 503-947-1995.**

La Solicitud de Dispensa o Perdón de Sobrepago está disponible para descargar en <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> y se puede presentar de cualquiera de estas maneras:

- **Frances en Línea:** Inicie sesión en su cuenta de Frances en Línea (Frances Online) y envíe un mensaje al Departamento de Desempleo
- **Envíe un mensaje al Departamento de Empleo sobre el seguro de desempleo:** unemployment.oregon.gov/contact
- **Correo electrónico:** UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **Correo postal:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

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 stated above.** See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

NOTA: Puede apelar esta decisión presentando una Petición de Revisión Judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) **dentro de los 30 días siguientes a la fecha de entrega de esta decisión indicada arriba.** Vea ORS 657.282. Para obtener formularios e información, visite <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> y elija el formulario para “Junta de Apelaciones Laborales”. En este sitio web, hay información disponible en español. Puede solicitar un intérprete para la Corte en <https://web.courts.oregon.gov/osca/clas/CLASRequestFormRedirect.html> También puede comunicarse con la Corte de Apelaciones por teléfono al (503) 986-5555, por fax al (503) 986-5560 o por correo a 1163 State Street, Salem, Oregon 97301.

Por favor, ayúdenos a mejorar nuestro servicio completando una encuesta de servicio al cliente. Para completar la encuesta en línea, vaya a <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Si no puede completar la encuesta en línea y desea obtener una copia impresa de la encuesta, comuníquese con nuestra oficina.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
 Email: appealsboard@employ.oregon.gov
 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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.