

EO: Intrastate
BYE: 10-May-2025

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

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EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0819

Late Application for Review Allowed
Affirmed
Disqualification

PROCEDURAL HISTORY: On June 6, 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 (decision # L0004435543). Claimant filed a timely request for hearing. On October 15, 2024, ALJ Ensign conducted a hearing at which the employer failed to appear, and on October 21, 2024, issued Order No. 24-UI-270079, affirming decision # L0004435543. On November 12, 2024, Order No. 24-UI-270079 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On November 27, 2024, claimant filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the statement included with claimant's late application for review, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

WRITTEN ARGUMENT: Claimant did not declare 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing and EAB Exhibit 1 when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Qwest Corporation employed claimant as a customer service agent from February 19, 2024, until May 17, 2024.

(2) The employer had an attendance policy wherein an employee accrued points for being absent or tardy, with certain limited exceptions, and was subject to discipline if they accumulated a specified number of points within a period of time.

(3) On March 5, 2024, claimant was notified of the sudden death of her nephew. Claimant was absent from work for three days shortly thereafter, which were not excused under the employer's bereavement policy based on the degree of familial relationship. After the third absence, claimant received a warning regarding her attendance and was led to believe that the points resulting from her absences could be excused if she provided documentation regarding the death. Claimant provided the requested documentation, but the points were not excused. Claimant believed that she could not be absent again during the remainder of her first year of employment without incurring additional discipline.

(4) On or around April 19, 2024, claimant received a warning for having disconnected a call from a customer who was using abusive language. Claimant was expected to transfer such calls to a supervisor if she could not deescalate the situation, but supervisors were rarely available to take such calls. Claimant was unable to find a supervisor who could take the call, and felt that she could not continue to wait for one without violating the employer's policy against keeping customers on hold for extended periods. Claimant therefore disagreed with the warning.

(5) In early May 2024, claimant was four minutes late clocking in after a break, causing the employer to issue claimant a warning.

(6) On May 5, 2024, claimant gave written notice of her resignation, which was to become effective two weeks later on May 17, 2024. Claimant quit work because she felt she was "not going to be supported" by the employer based upon the three warnings she received over the previous two months, particularly the attendance warning. Audio Record at 22:59. Claimant also quit work due to the "volume of the calls" and "the experiences that [she] had with supervisors," including supervisors not being available or willing to take difficult calls. Audio Record at 23:15. Claimant did not discuss her concerns with supervisors or the employer's human resources department prior to quitting, except for contesting the first warning with her supervisor. The employer had generally been satisfied with claimant's work. Claimant did not work for the employer after May 17, 2024.

(7) Claimant attended grief counseling sessions following the death of her nephew at which she discussed stress from work, but had not been diagnosed with or treated for a long-term mental health condition.

(8) On October 21, 2024, Order No. 24-UI-270079 was mailed to claimant's address of record on file with the Office of Administrative Hearings (OAH). Claimant received the order shortly thereafter. Claimant wrote an application for review and, on October 29, 2024, gave it to her husband to fax to EAB. Claimant believed that EAB had received the fax by the following day. On November 20, 2024, claimant learned that the fax was unreadable and her application for review had therefore not been filed.

(9) On November 27, 2024, claimant filed a late application for review of Order No. 24-UI-270079.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Claimant voluntarily quit work without good cause.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 24-UI-270079 was due by November 12, 2024. Because claimant filed her application for review on November 27, 2024, it was filed late. Claimant wrote in a statement accompanying the late application for review that she believed that her husband had faxed a timely application for review to EAB by October 30, 2024, but later learned that EAB received “only a single black page.” EAB Exhibit 1 at 1. EAB’s failure to receive a legible copy of claimant’s fax was a circumstance beyond her reasonable control that prevented timely filing. Claimant further wrote that the circumstance that prevented timely filing ceased to exist on November 20, 2024, and it can therefore reasonably be inferred that she learned on that date that her fax had not been received. EAB Exhibit 1 at 1. Because claimant filed the late application for review seven days later, on November 27, 2024, it was filed within a “reasonable time.” Accordingly, claimant’s late application for review is allowed.

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.

Claimant quit work because she felt she was “not going to be supported” by the employer due to the three warnings she had received over two months, and because of the volume of calls and her experiences with supervisors. Claimant did not dispute the conduct underlying each of the three warnings. The record therefore shows that claimant was absent from work following her nephew’s death, disconnected a customer’s call, and was late returning from a break. The latter two incidents involved claimant having violated reasonable employer expectations: that she transfer calls from abusive customers to supervisors rather than disconnecting them, and that she promptly return from breaks. That the employer merely warned claimant that such conduct violated their expectations did not constitute a grave situation because claimant had the opportunity to avoid further discipline by adhering to the employer’s policies.

Similarly, the first warning, with which claimant was most dissatisfied, served to reinforce to claimant the employer's attendance expectations. The employer had a points-based attendance policy wherein employees accrued points for absences or instances of tardiness, and were not subject to suspension from work or discharge unless they exceeded specified point levels. Points could be disregarded under limited, specified circumstances, which did not include grieving the death of a nephew. The employer's attendance policy was reasonable to the extent that it did not subject an employee to suspension or discharge for missing work due to illness, bereavement, or other unavoidable circumstances. The policy had not subjected claimant to such discipline. Claimant worried that the policy meant that she could not be absent again for any reason during her first year of employment. However, as of the time claimant quit work, this did not constitute a grave situation because of the uncertainty that the need for such an absence would arise and, if it did, whether the employer would unreasonably fail to excuse it.

Issuance of the three warnings, even when considered collectively, did not suggest that the employer was trying to prevent claimant from succeeding in her job or wanted her to quit work. To the contrary, the warnings appeared to serve as a way to alert claimant that the employer expected strict adherence to their policies so that claimant had an opportunity to succeed in her work by abiding by them. Therefore, claimant has not shown that she faced a grave situation as a result of the warnings.

Claimant also asserted that she quit work due to the "volume of the calls" and "the experiences that [she] had with supervisors." Audio Record at 23:15. Claimant explained that the employer expected that calls should generally not exceed ten minutes in length, and that she sometimes greatly exceeded that limit, often because she felt that the call needed to be transferred to a supervisor but no supervisor was available or willing to take the call. Audio Record at 29:00. Claimant also disliked that supervisors would instruct her on how to attempt to deescalate situations with difficult customers rather than taking over the calls themselves. Audio Record at 29:48. The record does not suggest that the employer was dissatisfied with claimant's handling of calls, except for the instance in which she disconnected a call and received a warning for doing so. Claimant testified that "several" of her coworkers who were hired and began training at the same time as her had been discharged during training for failing to meet the employer's standards on pace, productivity, and quality. Audio Record at 31:20. That claimant successfully progressed through her training suggests both that she was capable of meeting the employer's expectations regarding these metrics, and that the employer was generally satisfied with her work. While claimant saw much room for improvement in how the employer managed their operations with respect to customer service calls, this did not constitute a grave situation. Accordingly, claimant failed to show that she faced a grave situation with respect to any of her reasons for quitting work, and therefore quit without good cause.

For these reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective May 12, 2024.

DECISION: Order No. 24-UI-270079 is affirmed.

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

DATE of Service: December 27, 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 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.



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 desisyong ito.

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 محكمة الاستئناف 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

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