

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0821

Affirmed
Eligible Weeks 21-24 and 22-24
Disqualification Effective Week 23-24

PROCEDURAL HISTORY: On October 8, 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 May 19, 2024 (decision # L0006431409). Claimant filed a timely request for hearing. On November 19, 2024, ALJ Janzen conducted a hearing, and on November 20, 2024, issued Order No. 24-UI-273891, modifying decision # L0006431409 by concluding that claimant was discharged, not for misconduct, within 15 days of her planned voluntary leaving without good cause, and was eligible for benefits for the weeks from May 19 through June 1, 2024 (weeks 21-24 and 22-24), but disqualified from receiving benefits effective June 2, 2024 (week 23-24). On November 25, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Carioca Bowls, Inc. employed claimant as a shift lead in their restaurant from March 9 to May 20, 2024. Claimant had worked for the employer previously.

(2) When claimant agreed to return to work for this period, she told the employer she did not wish to work as a shift lead, as opposed to a regular employee, because she disliked the additional responsibilities. However, claimant received a higher wage than that paid to regular employees and ultimately agreed to the shift lead role because she felt she was being assigned the work of that role and could not refuse it without risking her employment entirely.

(3) In early May 2024, claimant lost her keys at work and spent approximately 40 minutes looking for them. The employer initially declined to pay claimant for this time. After claimant protested, the employer agreed to pay claimant for the time. Following this incident, the employer felt that claimant was “very disgruntled and not as engaged in the work.” Audio Record at 18:15.

(4) By mid-May 2024, claimant increasingly resented the additional responsibilities of a shift lead, primarily that she had to train other employees. Claimant felt she “wasn’t listened to” when she told the employer she had not wanted to be a shift lead prior to starting work in March 2024, despite claimant

ultimately accepting that position. Audio Record at 12:49. Claimant thought there was a “risk” of being discharged if she insisted on being demoted from the shift lead role. Audio Record at 12:56. Claimant therefore decided to quit work.

(5) On May 20, 2024, claimant met with the employer and told him that she was resigning, effective two weeks later. The employer did not allow employees who resigned to work notice periods, and felt that when an employee is “disgruntled, it doesn’t work to have them in the dynamic.” Audio Record at 20:00. The employer therefore did not permit claimant to work after that day. The employer considered claimant “disgruntled” at that time because claimant “wasn’t speaking positively about [the owner of the company] or the company.” Audio Record at 22:29. Claimant did not work for the employer following the end of her May 20, 2024, shift.

CONCLUSIONS AND REASONS: Claimant was discharged, not for misconduct, within 15 days of her planned voluntary leaving without good cause.

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).

The record shows that on May 20, 2024, claimant gave notice to the employer that she planned to quit work effective two weeks later, on June 3, 2024. The employer testified that claimant did not state that she “was going to” work for two additional weeks, but stated that she “could, if [the employer] needed it.” Audio Record at 19:56. Following this testimony, claimant was asked whether she had stated to the employer that she was “putting in [her] two weeks” or stated that she “could work two weeks if [she was] needed,” and claimant replied, “I clearly stated that I was putting in my two weeks. It was not ‘I’m quitting and I can work if you need me to.’” Audio Record at 26:40. Claimant further testified that she intended to continue working for those two weeks both for the benefit of her coworkers and so that she would have time to find other work. Audio Record at 14:10, 27:06. The employer’s explanation for not allowing claimant to work after the day she gave notice was, “From prior experience, when somebody quits, it’s not okay to have them in the dynamic with the coworkers... So, when she quit, that... means you don’t work there anymore.” Audio Record at 22:22.

These two contrasting accounts are weighed, including claimant’s detailed reasons for insisting on working the two-week notice period and the employer’s policy of not allowing employees who have given notice of their resignation to work notice periods. It is more likely than not that claimant stated that her resignation would be effective two weeks later, rather than delegating to the employer the right to choose the effective date, and that the employer did not allow her to work during that notice period. Accordingly, the work separation was a discharge.

However, ORS 657.176(8) states, “For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to

the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.”

For reasons explained in greater detail below, claimant was discharged, not for misconduct, with 15 days of her planned voluntary leaving without good cause. ORS 657.176(8) therefore applies.

Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. “As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.” OAR 471-030-0038(3)(a). “[W]antonly negligent’ means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.” OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant on May 20, 2024, because she gave notice of that she intended to quit. While the employer felt that claimant was “disgruntled” from an incident that had occurred earlier that month, and that she “wasn’t speaking positively about [the owner] or the company,” the record does not suggest that the employer intended to, or would have, discharged claimant that day for those reasons alone. Audio Record at 22:29. The discharge analysis focuses on the proximate cause of discharge, which is the incident without which the discharge would not have occurred when it did. *Appeals Board Decision 09-AB-1767*, June 29, 2009. More likely than not, claimant would not have been discharged on May 20, 2024, had she not given notice of her resignation, which therefore was the proximate cause of the discharge. It is within an employer’s discretion to have a policy of not allowing employees to work a notice period when they intend to quit work on a future date. However, as is the case here, such a scenario does not involve an alleged willful or wantonly negligent violation of a reasonable employer expectation, and therefore does not involve misconduct. Claimant therefore was discharged, but not for misconduct.

Planned 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 gave notice of her intent to quit work, effective June 3, 2024, because she was dissatisfied with the extra responsibilities of being a shift lead. When asked to identify which extra responsibilities she

was dissatisfied with, claimant stated, “Being a little bit more in charge of. . . operations of things” and being “in charge of training people.” Audio Record at 12:22, 13:20. Claimant felt that she had told the employer that she did not want these responsibilities or the shift lead title prior to her March 2024 hire, but that they were “pushed” on her and she had to either accept the position or risk not working for the employer at all. Audio Record at 12:16. The record does not suggest that claimant was unable to perform these functions to the employer’s satisfaction, but instead suggests that she merely preferred not to do them, or felt that her compensation was inadequate for having to do them. Claimant’s preference to work as a regular employee rather than a shift lead was not a circumstance of such gravity that it would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work. Therefore, claimant’s planned voluntary leaving was without good cause.

For these reasons, claimant was discharged, but not for misconduct, within 15 days of her planned voluntary leaving without good cause. Pursuant to ORS 657.176(8), claimant is not disqualified from receiving unemployment insurance benefits based on the work separation for the weeks from May 19 through June 1, 2024 (weeks 21-24 and 22-24), but is disqualified from receiving benefits effective June 2, 2024 (week 23-24).

DECISION: Order No. 24-UI-273891 is affirmed.

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

DATE of Service: December 24, 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.

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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.

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 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.

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