

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0853

Affirmed
Disqualification
Ineligible for Self-Employment Assistance Allowance

PROCEDURAL HISTORY: On May 21, 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 April 21, 2024 (decision # L0004179182).¹ Also on May 21, 2024, the Department served notice of an administrative decision concluding that claimant was not eligible for benefits under the Self-Employment Assistance program (decision # L0004166987). Claimant filed timely requests for hearing on decisions # L0004179182 and L0004166987.

On November 7, 2024, ALJ Lucas conducted a partial hearing on decision # L0004166987, the denial of Self-Employment Assistance allowance issue, but did not complete the hearing due to technical difficulties. On November 25, 2024, ALJ Lucas conducted a separate hearing on decision # L0004179182, at which the employer failed to appear, and completed the hearing on decision # L0004166987. On December 2, 2024, ALJ Lucas issued Order No. 24-UI-275278, affirming decision # L0004179182. On December 3, 2024, ALJ Lucas issued Order No. 24-UI-275424, affirming decision # L0004166987. On December 17, 2024, claimant filed applications for review of Orders No. 24-UI-275278 and 24-UI-275424 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 24-UI-275278 and 24-UI-275424 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0852 and 2024-EAB-0853).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained

¹ On October 22, 2024, the Department issued decision # L0006703000, an administrative decision that amended decision # L0004179182. The amendment was to note that claimant's denial of benefits was effective from April 21, 2024 to September 28, 2024. The inclusion of the September 28, 2024 end date presumably was to reflect that claimant had requalified for benefits beginning after the end date by earning four times her weekly benefit amount.

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 when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) United Access LLC employed claimant as a service manager from April 2023 until April 24, 2024.

(2) The employer's business involved installing or servicing ramps and hand controls in vehicles intended for use by mobility-challenged individuals, such as individuals who are confined to wheelchairs. Claimant supervised the work of two technicians and reported to the general manager (GM). The GM was also claimant's trainer.

(3) Previously, when filling the service manager position, the employer had promoted one of their technicians to the role. Because claimant had no prior technician experience, claimant struggled and the GM at times told her that she was not learning fast enough. Claimant and the GM also sometimes disagreed about how claimant supervised the technicians.

(4) Claimant believed that an employee in the office was hostile toward her. In late February or early March 2024, claimant reported the employee's hostility to the employer's Human Resources (HR) office. Thereafter, the employer addressed the employee's hostility to claimant's satisfaction.

(5) In early 2024, the GM took a leave of absence for a month and a half due to the death of his father. During this time, the technicians worked on some repair jobs that the GM had assigned to them prior to taking leave and that the GM had intended to supervise. Claimant did not supervise the technician's work on these jobs. A technician made a significant error on one of these repair jobs, which was costly to the employer.

(6) After the GM returned from leave, he made the initial contact with a customer for whom the employer installed hand controls. After the install, claimant believed the GM had followed up with the customer about the quality of the install. In fact, the GM had expected claimant to follow up with the customer and had not himself contacted the customer. Later, the customer complained that the hand controls were not installed correctly and the employer had not contacted them.

(7) On April 5, 2024, claimant was called into a meeting with the GM and with the employer's vice president joining remotely. The GM told claimant that she needed to either improve or leave the employer. The improvement the GM wanted to see was for claimant's daily sales numbers to improve. The GM also wanted to see improvement in terms of communication with customers after installs, and referenced the incident in which claimant had not followed up with the customer whose hand controls were installed incorrectly because claimant believed the GM had done so.

(8) The GM advised that if claimant took the option of leaving, the employer would offer her an \$8,000 severance. The GM told claimant that she could take up to three weeks to decide whether to take the option of leaving the employer with the severance.

(9) Thereafter, claimant took three weeks to consider the matter. Contrary to what the GM had sometimes stated to her, claimant did not think she was learning slowly, but instead thought that she was doing well under the circumstances and that her performance and sales numbers were improving. However, claimant felt that she could not trust the GM and that he treated her with “subtle disrespect” by challenging her supervision of the technicians. Transcript at 18. Claimant decided she would take the option of leaving the employer.

(10) On April 22, 2024, claimant informed the employer that she would stop working for them and accept the severance. Claimant signed the severance agreement on April 23, 2024. On April 24, 2024, claimant worked her last day for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause. Claimant is not eligible for Self-Employment Assistance allowance.

Nature of the Work Separation. If the 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 the 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).

Claimant voluntarily left work. On April 5, 2024, the employer presented claimant with the options to either improve or to leave the employer with a severance. The employer gave claimant three weeks to decide whether to take the option of leaving the employer with the severance. After considering the matter for three weeks, claimant decided to take the option of leaving the employer. Therefore, continuing work was available to claimant because she could have chosen to maintain the employment relationship with the requirements that she improve her sales numbers and her customer communication. Rather than pursue this, claimant chose to leave the employer, signing a severance agreement on April 23, 2024, and working her last day on April 24, 2024. Accordingly, claimant could have continued to work for the employer for an additional period of time but was unwilling to do so. The work separation was therefore a voluntary leaving that occurred on April 24, 2024.

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 voluntarily left work without good cause. At hearing, claimant explained that she chose to leave the employer and take the severance because she did not feel she could trust the GM and that he subjected her to “subtle disrespect” by challenging her supervision of the technicians. Transcript at 18-19. Claimant did not meet her burden to prove that the GM subjected her to treatment that would cause a reasonable and prudent person to leave work. Claimant struggled with learning some aspects of the job,

and it was natural that the GM, to whom claimant was a subordinate and trainee, would overrule some of claimant's decisions or manage the technicians in ways that differed from claimant. While it was understandably frustrating to have some of her decisions overruled, claimant did not establish that the GM's treatment presented her with a situation of such gravity that she had no reasonable alternative but to leave work.

Claimant also failed to pursue the reasonable alternative of choosing to continue to work for the employer and attempting to improve in the areas of her sales numbers and customer communication. The record supports that improving in these areas was achievable. At the time of her voluntary leaving, claimant believed that her performance and sales numbers were improving. Further, some of the errors noted during claimant's employment, such as the costly repair mistake made by the technician while the GM was on leave or the failure to follow up with the customer whose hand controls were incorrectly installed, were either unlikely to recur or could be avoided. For example, claimant could avoid such errors going forward by maintaining active communication with the GM or implementing a rule that claimant would follow up with all customers regardless of whether the GM initiated the install work.

Finally, claimant also suggested that she left work because the workplace environment was hostile, due to the behavior of the employee claimant believed to be hostile. However, the conduct of the employee did not present claimant with a situation of gravity because in February or March 2024, claimant reported the employee's hostility to the employer's HR office and the employer thereafter addressed the employee's hostility to claimant's satisfaction. Thus, that concern had been resolved before claimant quit. Because the situation had resolved by that point, leaving work due to a situation that no longer existed was not good cause for quitting.

For these reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective April 21, 2024.

Self-Employment Assistance Eligibility. ORS 657.156(1) provides that the Department shall provide reemployment service assistance to eligible individuals who are likely to exhaust benefits payable under ORS 657.150, and who will need such assistance to make a successful transition to new employment. ORS 657.158(1)(b) authorizes the Department to provide self-employment assistance to such individuals for the purpose of enabling them to "establish a business and become self-employed." Individuals eligible for self-employment assistance are entitled to a "Self-employment assistance allowance," which means "an amount, payable in lieu of regular benefits . . . to an individual participating in self-employment assistance activities[.]" ORS 657.158(1)(c).

Under ORS 657.158(3), with some exceptions, "The self-employment assistance allowance is payable to an individual at the same intervals and on the same terms and conditions as regular benefits under" ORS Chapter 657. This includes disqualification from receiving benefits under ORS 657.176(2)(c) for voluntarily leaving work without good cause.

Here, claimant voluntarily left work from the employer without good cause. As a result, under ORS 657.176(2)(c), claimant is disqualified from receiving benefits effective April 21, 2024. This disqualification is effective until claimant requalifies by earning four times her weekly benefit amount. ORS 657.176(2). Pursuant to ORS 657.158(3), claimant's disqualification for voluntarily leaving work without good cause prevents claimant from receiving benefits for self-employment assistance allowance.

For these reasons, claimant is not eligible to receive self-employment assistance allowance until the disqualification based on her voluntary leaving without good cause is no longer in effect.

DECISION: Orders No. 24-UI-275278 and 24-UI-275424 are affirmed.

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

DATE of Service: January 17, 2025

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 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 الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تأثیر 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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