EO: Intrastate
BYE: 26-Jul-2025

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

129
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0862

Late Application for Review Allowed
Affirmed
Disqualification

PROCEDURAL HISTORY: On August 16, 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 July 28, 2024 (decision # L0005821804).[1] Claimant filed a timely request for hearing. On November 4, 2024, ALJ Goodrich conducted a hearing, and on November 12, 2024, issued Order No. 24-UI-272972, affirming decision # L0005821804. On December 2, 2024, Order No. 24-UI-272972 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On December 20, 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 written statement included with claimant's late application for review, has been marked as EAB Exhibit 1, and 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, stating 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 submitted a written argument in the form of documents attached to her December 20, 2024, application for review. Claimant also submitted a written argument on January 6, 2024, which included a written portion as well as attached documents, most of which were the same documents attached to the December 20, 2024, argument. Claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances

[1] Decision # L0005821804 stated that claimant was denied benefits from July 28, 2024 to July 26, 2025. However, decision # L0005821804 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 28, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) Petco Animal Supplies Stores, Inc. employed claimant from August 2023 until August 1, 2024. Claimant worked as a general manager of one of the employer's stores located in Eugene, Oregon.

(2) KW, an animal care lead, was an employee who also worked at the store and was supervised by claimant. Claimant had a difficult working relationship with KW.

(3) In December 2023, the employer discharged an employee whom claimant had recently hired and who, unbeknownst to claimant, had begun a romantic relationship with KW. The employer discharged the employee because after a customer complaint, the employer discovered that the employee was a convicted felon. Claimant was out of state at a funeral at the time, and was not involved in discharging the employee. However, KW blamed claimant for the employee's discharge.

(4) Beginning in January 2024, KW had an attitude and belittled claimant, making comments like, "[T]hat's just stupid" or "Why would you like be an idiot like that?" Transcript at 14-15. Claimant tried to address KW's treatment by stating that they were not allowed to speak to claimant that way and telling them to calm down and take a walk. However, KW's insubordinate treatment continued, and they would ignore things claimant said or intentionally do things claimant had told them not to do.

(5) In February 2024, claimant, as a team-building exercise, had an undersized fish in her office so employees could for care for it and raise it to an appropriate size to be sold. A customer overheard KW talking with another employee about a plan to kill the fish by pouring clear soda into the fish's enclosure. The customer overheard KW state, "[Claimant's] going to be so bummed about this. It's going to be hilarious," and "I really enjoy making [claimant's] life a living hell." Transcript at 18-19. The customer called claimant's store and conveyed what he had overheard. When he called, KW intercepted the message and prevented it from reaching claimant.

(6) Shortly thereafter, claimant came to work and found the fish was dead. A few weeks later, the customer called again, described what he had overheard, and the information reached claimant. Claimant conveyed the information from the customer to her supervisor. The supervisor told claimant to personally interview KW, the employee they were talking to, a third employee who overheard them talking, and the customer.

(7) Claimant considered the employer's direction that she personally interview the individuals concerned to be inappropriate because she viewed herself as the complaining party. Claimant conducted the interviews, emailed them to her supervisor and the employer's human resources (HR) department, and asked what the next steps would be. Based on the interviews she conducted, claimant believed KW had killed the fish. The employer ultimately determined that they could not substantiate that KW had killed the fish. However, the employer never told claimant the outcome of their investigation.

(8) In May 2024, the employer did a walk-through inspection of claimant's store and failed the store, which potentially placed claimant's job in jeopardy. Though the employer did not discharge claimant, KW believed that claimant would lose her job. A customer overheard KW laughing and joking "about finally getting [claimant] fired." Transcript at 35. The customer thought KW's reaction was inappropriate. The customer emailed the store conveying what they had heard and expressing their disapproval. The email address the customer emailed was one to which KW had access. KW saw the email and replied to the customer with a threatening email.

(9) Claimant reported KW's conduct regarding emailing the customer to her supervisor and the HR department. The employer tried to investigate but when they attempted to contact the customer, the customer ignored them. After reporting the incident, claimant heard nothing back from the employer as to whether any action would be taken against KW.

(10) KW continued to be rude or ignore claimant at times. Claimant sometimes would caution KW and report some of these matters to her supervisor and the HR department. When cautioned, KW often responded by complaining to the employer's HR department that claimant was retaliating against them. Claimant wanted to discharge KW, but was concerned about doing so without support from her supervisor and the HR department, because she believed it was likely KW would complain that the discharge was retaliatory.

(11) The difficulties claimant experienced with KW and the employer's lack of communication and pattern of inaction against KW negatively affected claimant's mental health. Claimant had weekly panic attacks and, at some point during her employment, was diagnosed with generalized anxiety and depression.

(12) By the start of July 2024, KW was absent or tardy for work enough times that terminating KW's employment was justified under the employer's attendance policies. On July 5, 2024, claimant asked for authorization from her supervisor and the HR department to discharge KW based on their attendance policy violations. On July 8, 2024, the employer informed claimant that her supervisor and the HR department approved of discharging KW. On July 11, 2024, claimant asked that another manager be present when KW was discharged. On the same day, the HR department replied that claimant's supervisor would be present by telephone when KW was discharged.

(13) Claimant did not immediately discharge KW. On July 28, 2024, claimant emailed her supervisor stating that she had hoped to first complete a medical leave of absence and then discharge KW, but that KW's attendance problems were continuing. Claimant stated that she planned to discharge KW in person on August 3, 2024. Claimant finalized KW's discharge paperwork on July 29, 2024. KW worked her last day of work on July 31, 2024.

(14) Claimant was scheduled to count inventory during an overnight shift starting on July 31, 2024, and ending on August 1, 2024. In the early morning hours of August 1, 2024, claimant checked her email and became aware of a July 30, 2024, anonymous email from an employee who worked at the store. The anonymous email contained a forwarded email they originally sent to the employer on July 4, 2024, which was also anonymous and in which the emailer listed multiple allegations relating to KW, some of which claimant had not been aware of. The anonymous emailer stated to claimant, "I wanted you . . . to

be aware of us anonymously sending a letter to corporate," and "We also sent this a while ago and nothing has come of it." Exhibit 1 at 3.

(15) When claimant read the email chain, which included some allegations against KW claimant had not known previously, and the emailer's assertion that the employer had taken no action, claimant concluded that the employer would continue to not take action against KW and that their poor communication would continue. Claimant decided to quit working for the employer and left the store in the middle of the shift. Claimant did not work for the employer again.

(16) Later on August 1, 2024, claimant sent the employer a resignation email. The email outlined claimant's difficulties with KW, and raised examples of times the employer had failed to communicate. The director of the employer's HR department emailed claimant advising that her "feedback was taken seriously and will be addressed accordingly," and noting that the allegations in the anonymous email were being investigated. Exhibit 1 at 1.

(17) At the time claimant resigned, KW had already worked her last day at the store and was scheduled to be discharged on August 3, 2024. However, claimant concluded that because she had "had such a battle with one person for so long," the employer would not support claimant "any differently with anybody else," such as another employee who might be as difficult work with, as KW had been. Transcript at 47.

(18) On November 12, 2024, OAH mailed Order No. 24-UI-272972 to claimant's address on file with OAH. Order No. 24-UI-272972 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 24-UI-272972 at 5. Order No. 24-UI-272972 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before December 2, 2024, to be timely."

(19) Claimant did not receive Order No. 24-UI-272972 in the mail. EAB Exhibit 1 at 1. On November 29, 2024, claimant called OAH and inquired about the status of the order. An OAH representative advised that Order No. 24-UI-272972 had been mailed to claimant's address of record. Claimant confirmed her address with the OAH representative and requested OAH mail a second copy of the order to her. Claimant also did not receive the second copy of Order No. 24-UI-272972 in the mail. EAB Exhibit 1 at 1.

(20) On December 17, 2024, claimant called OAH again, and an OAH representative emailed Order No. 24-UI-272972 to claimant. EAB Exhibit 1 at 1. On December 20, 2024, claimant filed a late application for review of Order No. 24-UI-272972.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 24-UI-272972 is allowed. Claimant 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-272972 was due by December 2, 2024. Because claimant did not file her application for review until December 20, 2024, the application for review was late.

OAH attempted to mail Order No. 24-UI-272972 to claimant's address of record twice. Despite confirming that the address OAH had on file for her was accurate, claimant did not receive Order No. 24-UI-272972 in the mail either time it was sent. Claimant's failure to receive Order No. 24-UI-272972 in the mail despite it being sent to her current address was a factor beyond her reasonable control that prevented her from timely filing an application for review. On December 17, 2024, claimant received an emailed copy of Order No. 24-UI-272972, and the factor beyond her control ended. Claimant filed a late application for review three days later, on December 20, 2024. Claimant therefore established good cause to extend the deadline to file an application for review, and filed her application for review within a seven-day reasonable time. Claimant's late application for review therefore 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). Claimant had generalized anxiety and depression, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant voluntarily left work without good cause. To the extent claimant quit work because she concluded, after receiving the anonymous email, that the employer would not take action against KW and that their poor communication would continue, claimant left work without good cause.

The record shows that for some months, the employer had failed to take action against KW despite having been made aware of troubling allegations against them, such as KW allegedly killing a fish, and sending a complaining customer a threatening email, among other matters. Although the employer investigated and determined that they could not substantiate that KW killed the fish, they never informed claimant of the outcome of the investigation. Similarly, while the employer's efforts to investigate the threatening email to the customer was stymied by the customer's lack of cooperation, claimant never heard back from the employer as to whether any action would be taken against KW. The difficulties claimant experienced with KW, along with the employer's lack of communication and apparent pattern of inaction against KW negatively affected claimant's mental health. Claimant developed weekly panic attacks and, at some point during her employment, was diagnosed with generalized anxiety and depression.

Nevertheless, a reasonable and prudent person with the characteristics and qualities of an individual with claimant's conditions would not quit work when claimant did based on a belief that the employer would not take action against KW. As of the date that claimant quit, August 1, 2024, claimant's supervisor and the HR department had authorized claimant to discharge KW. Claimant had finalized KW's discharge paperwork on July 29, 2024, and KW had already worked her last day. Though claimant planned to discharge KW in person on August 3, 2024, claimant's supervisor would be present for the meeting by telephone. Therefore, the record shows that the employer had committed to taking action against KW and fully supported claimant's decision to discharge them.

Further, a reasonable person with the characteristics of claimant's conditions would not have concluded based on the anonymous email that the employer was wavering in their support for discharging KW. The email alleged, "We also sent this a while ago and nothing has come of it." Exhibit 1 at 3. However, the employer may simply have decided not to respond to the anonymous emailer while investigating the matters the emailer alleged. Further, the employer had authorized claimant to discharge KW on July 8, 2024, only a few days after receipt of the anonymous email. While claimant did not begin the process of discharging KW until some weeks later, it would have been logical for the employer to expect the discharge to occur in short order after July 8, 2024, and the employer may have believed that the imminent termination of KW's employment would obviate the need to respond to the anonymous emailer or investigate the allegations listed in the email. In any event, when claimant sent her August 1, 2024, resignation email that outlined examples of times the employer had failed to communicate along with a forward of the anonymous email, the director of the employer's HR department responded that the allegations in the anonymous email were being investigated. This suggests that had claimant not resigned and merely forwarded the anonymous email, the employer would have investigated the allegations.

Similarly, though the employer's lack of communication about the matters claimant had previously reported was regrettable, the employer had been prompt and responsive in their communications with claimant regarding the prospect of discharging KW for attendance violations. Claimant asked for authorization from her supervisor and the HR department to discharge KW based on their attendance policy violations on July 5, 2024, and received the authorization on July 8, 2024. On July 11, 2024, when claimant asked that another manager be present during the discharge meeting, the HR department replied the same day advising that claimant's supervisor would be present for the meeting by telephone. In addition, when claimant sent her resignation email, the employer's director of the HR department showed responsiveness by replying that claimant's feedback would be taken seriously and addressed accordingly. Though this occurred after claimant resigned, the director of the HR department may have been similarly responsive had claimant not quit and simply sent the employer an email that outlined examples of times the employer had failed to communicate.[2]

Next, to the extent claimant quit work because of KW's treatment of her, claimant also left work without good cause. The record shows that beginning in January 2024, KW was frequently rude, insulting, and insubordinate toward claimant. KW may have killed the fish kept in claimant's office, and openly

[2] Claimant also testified that she felt that the employer would not have supported claimant in the future if she was faced with working with another employee as difficult as KW had been. Transcript at 47. However, the mere possibility that claimant would work with another employee as difficult as KW in the future and that the employer might fail to communicate about or take prompt action against that employee, without a showing that those circumstances were likely to occur, is not sufficient to present claimant with a grave situation.

mocked claimant when claimant's store failed the walk-through inspection, believing claimant would lose her job. Claimant often reported KW's conduct to the employer, but heard nothing back. KW's treatment of claimant contributed to her anxiety and depression conditions and, in part, caused her to have weekly panic attacks.

However, at the time of claimant's voluntary leaving, KW's treatment did not present claimant with a situation of such gravity that she had no reasonable alternative but to quit. As of the date when claimant quit, KW had worked her last shift for the employer. Claimant had only to interact with KW once more, at a discharge meeting scheduled for August 3, 2024. Clamant would have support in this meeting, as claimant's supervisor was set to join the meeting by telephone. There is reason to believe that the discharge meeting would be straightforward given that the basis of the discharge would be KW's violation of attendance policies. The record lacks evidence that following through with the discharge meeting posed any risk of harm to claimant given that, at hearing, claimant testified that she did not fear KW, and that KW had never physically threatened claimant. Transcript at 40-41. Accordingly, at the time claimant resigned, KW's treatment did not present claimant with a grave situation because KW had already worked her last day of work and was to be discharged imminently. Furthermore, even if claimant's situation was grave due to KW's treatment as of when claimant quit on August 1, 2024, claimant need not have resigned but could have simply pursued the reasonable alternative of discharging KW on August 3, 2024, as planned.

For these reasons, claimant voluntarily left work without good cause and is disqualified from receiving benefits effective July 28, 2024.

DECISION: Order No. 24-UI-272972 is affirmed.

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

DATE of Service: January 22, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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