

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0024

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 24, 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 August 18, 2024 (decision # L0006237505).¹ Claimant filed a timely request for hearing. On December 20, 2024, ALJ Schmidt conducted a hearing, and on December 27, 2024, issued Order No. 24-UI-278143, affirming decision # L0006237505. On January 6, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) GNC Good Neighbor Center employed claimant as a case manager from May 22, 2024, through August 21, 2024.

(2) Throughout her employment, claimant had a contentious relationship with her supervisor, the housing program manager. Claimant believed that her supervisor had “assault[ed]” her, among “other incidents,” about which she complained. Transcript at 7.

(3) In August 2024, claimant was concerned that a client she was assisting was displaying symptoms of scabies and suggested that they seek medical attention. Claimant expressed concern about exposure to her supervisor, who suggested that she disregard it and “concentrate on doing [her] job.” Transcript at 6. On August 13, 2024, claimant learned that the client had been diagnosed with scabies. Claimant reported this to her supervisor and again asked not to be required to work with the client in person while the client was contagious. The supervisor denied the request and told claimant that she would be risking her job if she did not comply.

¹ Decision # L0006237505 stated that claimant was denied benefits from August 18, 2024 to February 1, 2025. However, decision # L0006237505 should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 18, 2024 and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(4) On August 20, 2024, claimant sent an email to, and later spoke with, the employer's executive director, who was the housing program manager's supervisor, about the supervisor disregarding her scabies concerns. The executive director gave claimant permission to "go home with pay" while she investigated the matter. Transcript at 7. Claimant and her supervisor were directed not to communicate with each other at that time. Transcript at 23. The executive director later shared the details of claimant's complaint with claimant's supervisor.

(5) Beginning at approximately 8:00 p.m., claimant's supervisor began sending emails to claimant "refuting every single point [claimant] had highlighted to [the executive director] regarding what was taking place." Transcript at 7-8.

(6) In the early hours of August 21, 2024, claimant woke up with symptoms of scabies. At approximately 3:00 a.m., upset by both the emails and the scabies symptoms, claimant replied to the emails, saying that they were "inappropriate and uncomfortable." Transcript at 8. Additionally, claimant "[wrote] a paragraph about [her supervisor's] abuse, and how [claimant was] on leave and [thought] that it's inappropriate for [the supervisor] to email [claimant.]" Transcript at 8. Claimant's description of the abuse included that her supervisor was "neurotic, anxious, unaware, . . . ghetto, . . . [an] egotist, . . . [and] juvenile." Transcript at 23. The email also referred to claimant's supervisor as a "Negro" and stated, "[S]he's performing blackface." Transcript at 10, 23.

(7) Claimant believed that use of the word "Negro" was "appropriate when utilizing it in conversation with another [N]egro," and was therefore acceptable for claimant to use when referring to her supervisor, based on their racial identities and the past use of the word between them without complaint. Transcript at 15. The employer's handbook prohibited the use of "threatening or intimidating language," "profane [or] malicious statements," and "discriminatory behavior [or] harassment." Transcript at 23. Claimant did not believe that her use of the word "Negro" or any other language she used in the email to describe her supervisor violated any employer policy.

(8) After sending the reply email, claimant sought medical attention for her symptoms and was diagnosed with scabies, which affected her entire body. The condition caused claimant to lose hair, and her face to be covered in blemishes, such that she "looked like [she] was a burn victim." Transcript at 9.

(9) On August 21, 2024, after the executive director reviewed claimant's email, she sent claimant an email stating, "Because of the severity of this violation, you're placed on administrative leave effective immediately[.]" Transcript at 22. The executive director viewed claimant's email as violating her directive not to contact the supervisor, and violating the employer's communication, discrimination, and harassment policies. The executive director asserted to claimant that the email's contents, particularly use of the word "Negro," was "racist." Transcript at 13.

(10) The executive director also informed claimant that a meeting would be scheduled for August 28, 2024, at which time the paid administrative leave period would conclude, and action would be taken regarding claimant's "violation." Claimant believed that the employer intended to discharge her at this meeting. Claimant replied in an email, in relevant part, "I take full responsibility. Please change the date to August 20th[.] [I]f you would like me to hand in my equipment before Monday[.], I'm willing to do that as well." Transcript at 21.

(11) The employer treated claimant's reply as a resignation with immediate effect, and did not attempt to dissuade claimant from leaving work or suggest that the complaints against her supervisor would be addressed at the meeting if claimant remained employed. Claimant did not work for the employer after August 21, 2024.

CONCLUSIONS AND REASONS: Claimant quit work with 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).

Claimant asserted that the work separation was a discharge, while the employer asserted that it was a voluntary leaving. Claimant did not rebut the executive director's testimony that the executive director's August 21, 2024, email stated that claimant was placed on paid administrative leave through August 28, 2024, at which time a meeting would be held to discuss claimant's alleged policy violation. Therefore, the employer was willing to continue the employment relationship, with pay, for an additional period of time after August 21, 2024. Claimant believed that she would be discharged on August 28, 2024, and asked that the effective date of the work separation be changed to August 20, 2024, which was the previous day.² By this, claimant expressed an unwillingness to maintain the employment relationship after August 21, 2024, by remaining on paid administrative leave through August 28, 2024. Accordingly, the work separation was a voluntary leaving that occurred on August 21, 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.

The order under review concluded that claimant's reason for quitting work was that she faced potential discharge, that this did not constitute a grave situation, and that claimant had the reasonable alternative to quitting work of attending the August 28, 2024, meeting to see whether the employer would discharge her. Order No. 24-UI-278143 at 3. The record does not support these conclusions. Claimant quit work because of the ongoing contentious relationship with her supervisor, including that the supervisor required claimant to endure exposure to scabies, which claimant then contracted.

² Claimant gave conflicting accounts regarding her understanding of this situation, testifying that she thought simultaneously that she had been discharged by the August 21, 2024 email and that she would be discharged at the August 28, 2024 meeting. Transcript at 16. Claimant did not rebut the employer's assertion that the email informing her of the August 28, 2024 meeting also stated that she was on paid administrative leave until that date, which should have alerted claimant that she had not yet been discharged. Moreover, the record does not suggest what other than the effective date of the work separation claimant could have been requesting that the employer move from August 28, 2024 to August 20, 2024. See Transcript at 33.

After noticing a client developing a rash, claimant went to her supervisor out of concern for the client, but was told to concentrate on doing her job. Claimant followed this directive but noticed that the rash continued to grow, and therefore suggested to the client to seek medical attention. The client was subsequently diagnosed with scabies. Claimant asked her supervisor if she still had to continue to work with the client, and her supervisor stated, in part, “I’m not scared of [scabies]. Nothing’s going to happen.” Transcript at 30. Claimant further expressed her discomfort at this response. At that point, the supervisor got frustrated with claimant and told her that she had “given [her] a directive,” and if claimant wanted to keep her job, she had to continue working with her clients during their contagious period. Transcript at 30-31. Claimant was diagnosed with scabies on August 21, 2024, and it can reasonably be inferred that this was a result of having to work with the client while contagious. Claimant testified that at approximately 3:00 a.m. on that date, her entire body was “covered” from her eyelids to the soles of her feet, and she was diagnosed later that day with “one of the most severe cases that [the provider] had ever seen in this part of the country.” Transcript at 32-33. The employer did not rebut this testimony.

On August 20, 2024, the day prior to the emergence of claimant’s symptoms, claimant had complained to the executive director of her supervisor’s directive to continue working in person with a client who was being treated for a contagious medical condition, among other concerns. Details of the complaint were shared with claimant’s supervisor. In response, claimant received from the supervisor a series of emails refuting claimant’s complaint against her, which claimant reviewed at the time the scabies symptoms were emerging. The supervisor’s role in claimant’s having contracted scabies, including threatening claimant’s job if she did not work with the still-contagious client in person, along with her emails refuting claimant’s complaints during a period when they were directed not to contact each other, would have caused a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work. Claimant therefore faced a grave situation.

Claimant replied to her supervisor’s emails using language that the employer concluded violated their policies regarding the treatment of others. Claimant explained that she believed the language used in her email, particularly the word “Negro,” was “[a]bsolutely” appropriate because of her and her supervisor’s racial identities, and because past communications between them had included use of the word “Negro.” Transcript at 15. More likely than not, claimant was only attempting to describe the supervisor’s behavior as claimant viewed it, in ways that claimant reasonably thought were not threatening, intimidating, profane, malicious, discriminatory, or harassing. Further, given that claimant’s supervisor initiated contact with claimant about the issues under investigation, it is reasonable to infer that claimant believed that the prohibition on communication between claimant and her supervisor was no longer in effect when claimant sent her reply. The employer’s actions in placing claimant on administrative leave pending a disciplinary meeting on August 28, 2024, for this perceived violation, rather than assuring claimant that her concerns regarding her supervisor’s ongoing conduct would be promptly addressed, added to the gravity of the situation.

Furthermore, claimant did not have a reasonable alternative to quitting work. Claimant’s supervisor evinced an unreasonable degree of indifference toward claimant’s health by dismissing her legitimate concerns about being forced to work closely with someone being treated for a contagious medical condition. That indifference led to claimant contracting scabies and suffering severe symptoms. In the context of persistent conflict throughout claimant’s employment, the incident demonstrated that this

supervisory relationship could not continue. The executive director did not question claimant's decision to forego paid administrative leave in favor of immediately separating from employment, and did not tell claimant that the August 28, 2024, meeting would involve exploring changes to claimant's supervision rather than merely disciplining claimant. It can reasonably be inferred from this, and the executive director citing the "severity of the violation" in placing claimant on a week of paid administrative leave that the result of the August 28, 2024, meeting, had claimant attended it, would have been claimant's discharge, or at least having to continue working under the supervision of her supervisor, which would not have lessened the gravity of claimant's situation. Therefore, attending the meeting likely would have been futile, and not a reasonable alternative to quitting. Accordingly, claimant had no reasonable alternative to leaving work, and therefore quit with good cause.

For these reasons, claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 24-UI-278143 is set aside, as outlined above.

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

DATE of Service: February 7, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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

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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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