

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0026

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 27, 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 from August 4, 2024, through January 4, 2025, and overpaid \$5,474 in benefits that she must repay (decision # L0006298032). Claimant filed a timely request for hearing. On December 20, 2024, ALJ Micheletti conducted a hearing, and on December 27, 2024, issued Order No. 24-UI-278151, modifying decision # L0006298032 by concluding that claimant was disqualified from receiving benefits effective July 28, 2024. On January 8, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument 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. 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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Millard Holdings, LLC employed claimant as the office business manager at their residential care facility from February 7, 2024, through July 31, 2024. Claimant worked full time and was paid \$26 per hour in her role as office business manager.

(2) Prior to working for the employer, claimant had worked in the same industry for approximately 23 years. Before she took the office business manager position with the employer, claimant had been working as the executive director of another facility in the same field for six months, and was paid \$43 per hour for that work.

(3) Claimant was diagnosed with bipolar disorder and depression when she was 17 years old, and has also been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). While she was working for the employer, claimant was treating these conditions with medication.

(4) On July 28, 2024, claimant's close friend died. Claimant went to work on July 29, 2024, but took July 30, 2024, off from work to cope with the grief of losing her friend. On July 31, 2024, claimant returned to work but continued to experience "despair and sadness" at work that day because of the recent loss. Transcript at 13.

(5) 15 minutes prior to the end of her shift on July 31, 2024, claimant was called into a meeting with the executive director of the facility and the president of the company. The two told claimant that the company was "restructuring" and eliminating claimant's position of business office manager effective August 1, 2024, for financial reasons. Transcript at 5. They also handed claimant a letter advising her that she would be "released with effect from 8/1/24," but that she had "the option to remain employed and keep [her] current benefits should [she] accept the new positions that will be offered to [her]." Transcript at 7.

(6) During the meeting on July 31, 2024, after informing claimant that her position was being eliminated, the employer offered claimant a position as a receptionist at the same facility. The receptionist position was intended to be part-time, working approximately 20 hours per week, and was to pay \$19.50 per hour. The responsibilities of the position, which was considered to be entry-level, were substantially similar to the business office manager position that was being eliminated. Upon receiving this news, claimant became upset and started crying, and stated that she would not take the receptionist position. After this, the meeting ended, and claimant left. Claimant did not intend to return to work for the employer after she left, and did not do so. Transcript at 10. Claimant was not willing to accept the offer of the receptionist position because she felt she was overqualified for it, and because the reduction in hours and rate of pay would constitute a significant reduction in her income. Additionally, given the similarities in the job descriptions between her role as business office manager and the offered role as a receptionist, claimant believed that the employer's decision to "restructure" was a pretense for cutting claimant's pay rate and hours without a meaningful reduction in her duties.

(7) On January 13, 2024, claimant filed an initial claim for benefits. The Department determined claimant's weekly benefit amount to be \$782. On August 1, 2024, claimant reopened her claim. When claimant reopened her claim, she reported the separation from the employer as a layoff due to lack of work. As such, the Department allowed claimant benefits without investigating the work separation. Claimant subsequently claimed benefits for the weeks of August 4 through September 21, 2024 (weeks 32-24 through 38-24). These are the weeks at issue. The Department paid claimant benefits totaling \$5,474 for the weeks at issue.

(8) At some point after the Department allowed claimant benefits based on her separation from the employer, the employer reported to the Department that claimant had quit work. The Department subsequently adjudicated the work separation and determined that claimant quit work without good cause, disqualifying her from receiving benefits effective July 28, 2024. Based on this, the Department also determined that claimant was not entitled to any of the benefits she received for the weeks at issue, and that she had been overpaid \$5,474 in benefits.

CONCLUSIONS AND REASONS: Claimant quit work with good cause. Claimant was not overpaid benefits.

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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

This work separation occurred on July 31, 2024, when the employer advised claimant that they were eliminating her position, and then offered her another position within the company, which claimant declined. At hearing, claimant asserted that she was discharged. Transcript at 5. Presumably, claimant asserted that because the employer eliminated her position, and she therefore would not have been permitted to continue working in that particular position for an additional period of time. Nevertheless, the record shows that the employer would have permitted claimant to continue working for them in a different position. As explained in the letter that the employer gave claimant on her last day of work, claimant had “the option to remain employed and keep [her] current benefits should [she] accept the new positions that will be offered to [her].”

While the terms of claimant’s employment—the title, rate of pay, and number of hours—would have changed, the record shows that, had claimant accepted the receptionist position, there would have been no break in the employment relationship. The record does not show, for instance, that claimant would have been required to reapply to work for the employer, or that she would have been required to stop working for the employer for any period of time. By contrast, claimant responded to the offer of the receptionist job by immediately declining it. The record also shows that claimant did not intend to return to work for the employer after she left the meeting on July 31, 2024. Therefore, because the record shows that the employer would have permitted claimant to continue working for them for an additional period of time, but that claimant was not willing to do so, the work separation is properly characterized as a voluntary leaving.

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). Claimant had bipolar disorder, depression, and ADHD, permanent or long-term “physical or mental impairments” 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 quit work because the employer eliminated her position as the facility’s business office manager, and she was not willing to continue working for the employer by accepting the employer’s offer of a receptionist position. As a preliminary matter, to determine whether claimant had good cause

to quit, it is necessary to determine which provision of OAR 471-030-0038 governs quitting for such a reason.

Under OAR 471-030-0038(5)(b)(A), leaving suitable work to seek other work is not good cause. Here, the record does not explicitly show that claimant quit working for the employer to seek work elsewhere. However, given that she quit because she was not willing to accept the conditions of the new position that the employer offered her, it can be reasonably inferred that she quit with the intention of looking for other work. To the extent that claimant quit working for the employer to seek other work, however, OAR 471-030-0038(5)(b)(A) does not bar a finding that claimant had good cause for quitting because the work she left was not suitable.

ORS 657.190 states, “In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.” Here, claimant had over two decades of experience and prior training in the field and recently had come from a job where she was working as the administrator at another facility—presumably the highest position within the facility—where she had been earning more than twice the rate of pay that the offered receptionist job would have paid her. Given this background, the receptionist position was not suitable for claimant because claimant’s prior training, experience and prior earnings qualified her for a significantly higher-ranking, and higher-paid, position. As such, claimant did not leave suitable work to seek other work by refusing the receptionist position.

Under OAR 471-030-0038(5)(d), a claimant who leaves work due to a reduction in pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area[.]” However, OAR 471-030-0038(5)(d)(A) states, “[t]his section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee’s earnings are reduced as a result of transfer, demotion or reassignment.” Because claimant’s earnings were to be reduced due to demotion or reassignment, that section does not apply to this work separation.

Under OAR 471-030-0038(5)(e), a claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” The record indicates that the reduction in hours, which the offered receptionist position would have included, was among the reasons that claimant voluntarily quit work. Further, as the order under review correctly observed, the record does not show that the reduction in hours would have substantially interfered with claimant’s return to full-time work or that the cost of working would have exceeded what she was paid. Order No. 24-UI-278151 at 4.

However, merely stating that claimant quit work because the employer reduced, or intended to reduce, her hours misrepresents claimant’s circumstances. Rather, the record shows that claimant quit work because of the totality of the circumstances surrounding the elimination of her position, which included a significant reduction in her rate of pay, a significant reduction in her hours, her overqualification for the offered position, and the belief that the employer’s decision to “restructure” was merely a pretense

for reducing her pay and hours. While quitting due to the reduction in hours alone would not, under OAR 471-030-0038(5)(e), be considered good cause in this situation, the other components of claimant's decision to quit do, as explained below, amount to good cause. OAR 471-030-0038 does not contemplate circumstances in which multiple distinct but related factors of a reason for quitting variously do, or do not, constitute good cause. In the absence of such guidance, and where the overall reason for quitting does not fit neatly into one of the enumerated situations under OAR 471-030-0038(5), it is more appropriate to consider the totality of claimant's reason for quitting under the standard good-cause analysis of OAR 471-030-0038(4). Using that standard, the record shows that claimant had good cause for quitting.

The order under review concluded that claimant did not have good cause for quitting, explaining:

It is understandable that claimant would feel insulted about being offered a position for which she was overqualified for reduced pay. However, feeling insulted does not constitute a grave circumstance when the alternative is experiencing a complete lack of income. Being overqualified for a job does not create a grave circumstance when the alternative is becoming totally unemployed and having no income. Claimant did not identify anything about the receptionist job that would have created a grave circumstance for her other than the reduction in pay and hours, which is addressed below.

Order No. 24-UI-278151 at 3–4. In so concluding, the order under review fails to fully portray the circumstances under which claimant quit. While claimant might have felt “insulted” by the offer, claimant primarily quit because of a combination of being overqualified for the offered position and being concerned about the significant reduction in pay that would result from the reduced rate of pay and hours. Further, the record shows that claimant suffers from bipolar disorder, depression, and ADHD, was mourning the very recent death of a close friend, and had only a short period of time to decide whether to accept the employer's offer.¹ In such circumstances, a reasonable and prudent person, diagnosed with the conditions and experiencing the recent loss from which claimant was suffering, and given only a short time to decide whether to take a much lower-paying position for which they were significantly overqualified, would not have continued working for the employer for an additional period of time. Therefore, claimant's circumstances were grave. Further, as the only apparent options were for claimant to accept the offered position or quit, claimant had no reasonable alternative but to quit. Therefore, claimant quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or

¹ At hearing, claimant suggested that she had a mere 15 minutes to decide whether to accept the offer, as the offer was made approximately 15 minutes before the end of her shift on July 31, 2024, and her position was to be eliminated effective the following day. Transcript at 8. It is not clear from the record whether claimant was required to give the employer an answer by the end of her shift that day, or whether she could have waited until the following morning to make a decision. However, as the employer did not rebut claimant's assertion that she had only 15 minutes to decide, claimant's testimony on this point is taken as more likely than not accurate.

misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

The Department assessed the overpayment in this matter due to its determination, as affirmed by the order under review, that claimant was not eligible for benefits for the weeks at issue because she was disqualified due to her separation from the employer. Order No. 24-UI-278151 at 5. However, as explained above, the record shows that claimant quit work with good cause, and therefore was not disqualified from receiving benefits based on the work separation. As such, claimant was entitled to benefits for the weeks at issue, and was not overpaid benefits for those weeks.

DECISION: Order No. 24-UI-278151 is set aside, as outlined above.

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

DATE of Service: February 18, 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 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

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Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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