

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0029

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 18, 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 September 29, 2024 (decision # L0006653588).¹ Claimant filed a timely request for hearing. On December 16, 2024, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on December 24, 2024, issued Order No. 24-UI-277923, affirming decision # L0006653588. On January 10, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Upstart Network Corp. employed claimant as an engineer from November 2021 until October 1, 2024.

(2) In July 2024, claimant complained to the employer's human resources department about his manager, alleging discrimination based on age. The employer investigated the complaint.

(3) On August 20, 2024, the employer advised claimant that they concluded the investigation into his complaint and found it to be unfounded. At that time, the employer placed claimant on a performance improvement plan (PIP), which claimant complained was retaliatory. The employer responded to this complaint that they believed retaliation was not legally prohibited because they found claimant's initial complaint unfounded.

(4) The terms of the PIP were such that claimant was required to complete an engineering project to the employer's satisfaction by September 30, 2024, or he would be discharged at that time. Claimant believed that the project's complexity would typically call for collaboration with coworkers and take approximately three months to successfully complete. The employer prohibited claimant from seeking

¹ Decision # L0006653588 stated that claimant was denied benefits from September 29, 2024 to September 27, 2025. However, decision # L0006653588 should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 29, 2024 and until he earned four times his weekly benefit amount. See ORS 657.176.

assistance on the project from coworkers. Claimant informed the employer of these concerns, but the terms of the PIP did not change. The employer offered, as an alternative to the PIP, a proposed separation agreement that included severance pay. Claimant retained an attorney in response to these developments, who engaged in negotiations with the employer.

(5) During the final week of September 2024, claimant was presented with a negotiated separation agreement that provided for severance pay and would be effective October 1, 2024, which he signed. Claimant believed that he would be discharged on September 30, 2024, without severance pay, regardless of his work towards satisfying the PIP, if he failed to accept the separation agreement.

(6) Claimant submitted his work on the project as required by the PIP by September 30, 2024. The employer acknowledged receipt of the submission but did not indicate to claimant whether they found it satisfactory, or whether it would have been sufficient to preserve his employment had he declined the separation agreement.

(7) Claimant did not work for the employer after October 1, 2024, and received severance pay in accordance with the agreement.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause.

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). 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.

Per OAR 471-030-0038(5)(b)(F), leaving work without good cause includes resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct.

Claimant quit working for the employer because he believed that on or around September 30, 2024, he would be discharged without severance pay for reasons that did not amount to misconduct, but that he could instead enter into a separation agreement that would end his employment effective October 1, 2024, with severance pay. The order under review concluded that while the employer intended to discharge claimant at the end of the PIP period without severance pay, claimant did not face a grave situation and “could have continued working for the employer for an additional time” by rejecting the separation agreement and severance pay. Order No. 24-UI-277923 at 3. The record does not support this conclusion, instead showing that claimant faced a grave situation and had no reasonable alternative to quitting.

Claimant testified that he was placed on a PIP on August 20, 2024, in response to having made a complaint against his manager that the employer felt was unfounded. Audio Record at 12:49. He further testified that when he responded to the employer regarding implementation of the PIP that its timing and

circumstances appeared retaliatory and unlawful, the employer responded that they believed such retaliation was not prohibited. Audio Record at 15:34. The PIP was to end on September 30, 2024, at which time claimant would be discharged without severance pay if the employer determined that he had not completed a project to their satisfaction. The record shows that despite being denied the amount of time and assistance from coworkers typically allowed for such projects, claimant attempted to satisfy the terms of the PIP by completing the project to the best of his ability, and submitted it on or before the deadline.

Given claimant's testimony that the employer stated that they could legally retaliate against him for having made a discrimination complaint they determined to be unfounded, the unusually difficult circumstances under which claimant was to complete the project, and the subjective standard by which claimant's performance under the PIP would be judged, it is more likely than not that the employer intended to discharge claimant at the conclusion of the PIP period regardless of his performance on the project. Such a discharge would not have been for misconduct because it did not involve a willful or wantonly negligent violation of the standards of behavior that an employer has the right to expect of an employee.² Therefore, OAR 471-030-0038(5)(b)(F) is inapplicable, and the standard good cause analysis applies.

Claimant reasonably believed that he would be discharged for reasons that did not amount to misconduct, on or around September 30, 2024. The employer gave claimant the options of entering into a separation agreement that allowed him to continue working until October 1, 2024, and provided severance pay, or declining the agreement and facing likely discharge without severance pay on approximately the same date. Under those circumstances, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would enter into the separation agreement, thereby quitting work, if there were no reasonable alternative. Further, claimant had no reasonable alternative to leaving work, as the alternative of facing likely discharge on approximately the same date, but without severance pay, would have left claimant worse off and was therefore not reasonable. Accordingly, claimant quit work with good cause.

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

DECISION: Order No. 24-UI-277923 is set aside, as outlined above.

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

DATE of Service: February 4, 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

² See OAR 471-030-00358(3)(a), which defines "misconduct" for purposes of ORS 657.176(2)(a).

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 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.

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