

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0052

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 5, 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 October 6, 2024 (decision # L0007022417).¹ Claimant filed a timely request for hearing. On December 24, 2024, ALJ Ensign conducted a hearing, and on December 31, 2024, issued Order No. 24-UI-278492, affirming decision # L0007022417. On January 20, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Gaviotas Painting, LLC employed claimant as a painter from October 2021 until October 7, 2024.

(2) Claimant and the employer's owner had a contentious relationship throughout claimant's employment. The owner would often throw things at him, call him names, and use foul language toward him.

(3) In August or September 2024, claimant threatened to quit because of the owner's behavior toward him. After discussing the matter with the owner, claimant continued working for the employer because he believed that the owner's behavior would improve. The employer had no human resources department and no members of management other than the owner to whom claimant could address a complaint. The owner frequently worked on-site with claimant or otherwise had contact with him during his shifts.

(4) On October 7, 2024, the owner became upset because she had lent claimant a painting tool for personal use but later felt misled about who would actually be using the tool. The owner confronted

¹ Decision # L0007022417 stated that claimant was denied benefits from October 6, 2024, to January 11, 2025. However, decision # L0007022417 should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 6, 2024, and until he earned four times his weekly benefit amount. See ORS 657.176.

claimant, and an argument ensued. During the argument, the owner was “screaming” at claimant to “get the fuck away from her” and threw a drop cloth weighing a “couple pounds” at claimant, striking him in the face and knocking his glasses off. Transcript at 8-9.

(5) After the drop cloth hit claimant, he told the owner, “I’m not coming back. I want to get my stuff out of the van and leave.” Transcript at 9. The owner did not allow claimant to retrieve his belongings and told him to leave. Claimant left and did not return to work after that day because of the owner’s behavior, which he believed would not change if he continued working for the employer.

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.

Claimant quit work because of the owner’s treatment of him, particularly on October 7, 2024. The order under review concluded that claimant failed to prove by a preponderance of the evidence that the employer struck him in the face with a drop cloth because the parties’ differing accounts of the final incident were no more than equally balanced. Order No. 24-UI-278492 at 3. The record does not support this conclusion.

Both parties testified that claimant quit working for the employer on October 7, 2024, after the owner confronted him about misleading her regarding a tool he borrowed. Claimant testified that during the ensuing argument, the owner was “just screaming at [him] like get out of her face, get the fuck away from her” and threw a drop cloth that hit him in the face and knocked his glasses off. Transcript at 7-9. Claimant further testified that he told the owner he was “not coming back” and wanted to get his belongings and leave, but the owner would not allow him to retrieve his belongings, so he left without them. Transcript at 9. Additionally, claimant testified that on previous occasions the owner had called him “derogatory” names including “[a]sshole [and] fuck face,” and that she had thrown things at him including “[w]ork tools like a caulking gun, a paintbrush [and] a bucket.” Transcript at 7-8.

In contrast, the owner was asked at hearing if she was “yelling at [claimant] and cursing at him” on October 7, 2024, to which she replied, “Not that I know of. He was yelling at me and it was a heated conversation.” Transcript at 15. The owner testified with respect to “calling [claimant] names” on prior occasions, “I’m not saying that I said anything to hurt him. . . but it [is just the construction trade], cussing all the time during the course of the day. It just is whether he makes it about him.” Transcript at 16. The owner also testified regarding the October 7, 2024, incident, “I didn’t throw anything at him. He came up to me very aggressively yelling at me when, at the shop, at the back of the van, and I, honestly can’t remember everything perfectly. It was, it was at the end of a day and I’m tired, and I just remember he was pissed and I was upset.” Transcript at 15. Additionally, when asked at hearing if she

had thrown things at claimant on previous occasions, the owner testified, “No. Not that I know of. I’m 72. [Are] things going to slip out of my hands? Maybe.” Transcript at 16.

In considering these conflicting accounts, claimant provided a specific, detailed account of what he saw and heard the owner do and say on October 7, 2024, without suggestion that he had difficulty remembering the events. In contrast, the owner’s answer to being asked whether she had yelled or cursed at claimant on October 7, 2024, did not provide an unequivocal denial and focused instead on what claimant said and did. Further, while the owner directly denied throwing anything at claimant, on October 7, 2024, or previously, she suggested with regard to prior occasions that “[m]aybe” things “slip out of [her] hands.” The owner also explained that she was “upset” during the October 7, 2024, incident and suggested that she therefore had difficulty remembering what had occurred. Transcript at 15. The weight of the evidence favors claimant’s account due to its specificity and claimant’s greater ability to recall the events, and the facts have been found accordingly. Therefore, more likely than not, the owner yelled at claimant on October 7, 2024, using foul language and threw a drop cloth at his face, knocking his glasses off. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue to work for an employer under these circumstances, and claimant therefore faced a grave situation.

Furthermore, claimant had no reasonable alternative to quitting work. Continuing to work closely with the owner would have been unavoidable, and the employer had no one other than the owner to whom claimant could complain about her conduct. Claimant testified that the owner had engaged in similar behavior prior to the October 7, 2024, incident, but she persuaded him not to quit work “a month or two” prior by representing that her behavior would change. Transcript at 8. The owner generally denied having called claimant names, used foul language, or thrown things at him on prior occasions, but did not rebut that in August or September 2024 she and claimant discussed his desire to quit due to her behavior and that he decided not to quit at that time because he believed her behavior would change. As with the conflicting accounts regarding the October 7, 2024, incident, the weight of the evidence supports claimant’s detailed accounts of what the owner said to claimant and threw at him on prior occasions, and the facts have been found accordingly. Claimant therefore reasonably believed that addressing the owner’s behavior with her following the October 7, 2024, incident would have been futile, as it was previously. Accordingly, claimant had no reasonable alternative to leaving work, and therefore quit with good cause.

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

DECISION: Order No. 24-UI-278492 is set aside, as outlined above.

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

DATE of Service: February 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.