

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0054

Modified
Request for Hearing Timely
No Disqualification
No Overpayment

PROCEDURAL HISTORY: On August 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 from July 7, 2024 through April 19, 2025, and that claimant was overpaid \$2,205 in benefits that she was required to repay to the department (decision # L0005481598). On August 13, 2024, claimant filed a timely request for hearing that was not construed as such by the Department. On August 26, 2024, decision # L0005481598 became final without claimant having filed a recognized request for hearing. On September 4, 2024, claimant filed a late request for hearing. ALJ Scott considered the September 4, 2024 request, and on September 18, 2024 issued Order No. 24-UI-266515, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 2, 2024. On October 2, 2024, claimant filed a timely appellant questionnaire response.

On December 24, 2024, ALJ Christon conducted a hearing at which the employer failed to appear, and on December 30, 2024 issued Order No. 24-UI-278333, concluding that claimant filed a timely request for hearing, and modifying decision # L0005481598 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective July 7, 2024, and that she had been overpaid \$2,205 in benefits that she was required to repay to the Department. On January 21, 2025, claimant filed a timely application for review of Order No. 24-UI-278333 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 24-UI-278333 concluding that claimant filed a timely request for hearing. That part of Order No. 24-UI-278333 is **adopted**. See ORS 657.275(2).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) Oregon State University employed claimant as a technical assistant at a laboratory from April 27, 2024 through July 9, 2024. Claimant worked part-time, averaging 2.5 hours per month.

(2) On April 22, 2024, claimant filed an initial application for unemployment insurance benefits following a work separation from her primary employer. The Department determined that the claim was monetarily valid with a weekly benefit amount (WBA) of \$735.

(3) Claimant applied for the Department's self-employment assistance (SEA) program because she had a food and beverage concession business that, if approved, she intended to pursue as full-time work, rather than searching for full-time work through the regular unemployment insurance program. On May 10, 2024, the Department approved claimant for SEA benefits. Thereafter, claimant devoted at least 40 hours per week to the business in accord with SEA program requirements.

(4) On July 9, 2024, claimant notified the employer that she was quitting work. Claimant did not work for the employer thereafter. Claimant reported the work separation to the Department when filing her claim for the week in which it occurred. Claimant mistakenly believed that quitting work from the employer and working full-time complying with the program requirements set forth by the SEA program she was approved for by the Department would not in turn disqualify her from receiving SEA benefits.

(5) The Department paid claimant \$735 in SEA benefits each week for the weeks of July 7, 2024 through July 27, 2024 (weeks 28-24 through 30-24), totaling \$2,205. These are the weeks at issue.

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

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). Per OAR 471-030-0038(5)(b)(G), leaving work without good cause includes "leaving work for self-employment."

ORS 657.158 provides:

(1) As used in this section:

* * *

(b) "Self-employment assistance activities" means activities approved by the Director of the Employment Department in which individuals, identified under ORS 657.156 as likely to exhaust benefits, participate for the purpose of enabling those individuals to establish a business and become self-employed. "Self-employment assistance activities"

includes, but is not limited to, entrepreneurial training, business counseling and technical assistance.

(c) “Self-employment assistance allowance” means an amount, payable in lieu of regular benefits under this chapter to an individual participating in self-employment assistance activities in accordance with this section.

(2) (a) The weekly amount of the self-employment assistance allowance payable to an individual is equal to the weekly regular benefit amount.

(b) Self-employment assistance allowance amounts shall be paid from the Unemployment Compensation Benefit Fund or from federal benefits.

(3) The self-employment assistance allowance is payable to an individual at the same intervals and on the same terms and conditions as regular benefits under this chapter except that:

(a) The provisions of this chapter regarding being available for work, actively seeking work and refusing to accept suitable work are not applicable to the individual.

(b) The provisions of ORS 657.150 (6) relating to remuneration for services performed are not applicable to income earned from self-employment by the individual.

(c) An individual participating in self-employment assistance activities shall be considered to be unemployed under ORS 657.100.

(d) An individual who fails to participate in self-employment assistance activities or who fails actively to engage on a full-time basis in establishing a business and becoming self-employed is ineligible to receive the self-employment assistance allowance for each week in which the failure occurs.

* * *

As a preliminary matter, claimant’s participation in the SEA program exempted her only from the standard benefit eligibility requirements regarding being available for work, actively seeking work, and refusing to accept suitable work. ORS 657.158(3)(a). Therefore, despite participation in the SEA program, claimant was still subject to disqualification from benefits based on work separations as provided in ORS 657.176(2). The SEA program’s purpose is to allow a claimant to devote full-time work hours to pursuing a self-employment venture rather than seeking or accepting traditional employment, while maintaining eligibility for benefits. Claimant’s mistaken belief that participation in the program also exempted her from the provisions of ORS 657.176(2)(c), insofar as a work separation would further the goals of the SEA program, was therefore understandable. Nonetheless, claimant is subject to disqualification from benefits if she voluntarily quit working for an employer without good cause, and analysis of the work separation is therefore required.

The order under review concluded that claimant quit work for self-employment and, under OAR 471-030-0038(5)(b)(G), did so without good cause. Order No. 24-UI-278333 at 4. The record does not

support that this was the proximate cause of claimant's decision to quit work. Instead, the record shows that claimant quit work because she was already separated from her primary employer and mistakenly believed that her participation in the SEA program allowed her to quit work from this employer to devote her full-time work efforts to the operation of her business. This is distinguishable from "leaving work for self-employment" because it can reasonably be inferred that, had claimant not already been separated from her primary employer and had not been mistaken about the extent of the program's exemptions from standard benefit eligibility requirements, she would not have quit work when she did. Therefore, the proximate cause of claimant's decision to quit work was not only a desire to comply with the requirements of the SEA program, after she was accepted into the program and was already working full-time to do so, but her misunderstanding of the exemptions from standard unemployment insurance benefit requirements while participating in the SEA program. Accordingly, OAR 471-030-0038(5)(b)(G) does not preclude a finding of good cause, and the standard good cause analysis applies.

During her time working for the employer, claimant was offered an average of 2.5 hours of work per month. Claimant testified that by July 2024, her self-employment business was expanding such that it had signed a contract to operate four concession stands at a large venue and was employing 25 people. Transcript at 24. Claimant further testified that she was devoting at least 40 hours per week to the business and that the amount of work she was doing to run the business almost "crushed" her. Transcript at 23-24. Moreover, claimant understood the purpose of the SEA program was to allow her to devote full-time work hours to her business. The SEA program relieved claimant of many of the standard requirements of the unemployment insurance program that would impede her from focusing on the business full-time, and the record shows that claimant misunderstood this to extend to being able to quit part-time employment that offered negligible work hours. This belief, though mistaken, was not unreasonable.

Under these circumstances, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not maintain the employment relationship while already working full-time and participating in the SEA program. Claimant therefore faced a grave situation. Furthermore, there were no reasonable alternatives to leaving work, as the record suggests that the hours offered by the employer and the hours claimant needed to devote to her business were expected to continue at the same level indefinitely. Accordingly, claimant quit work with good cause and is not disqualified from receiving 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 misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Because claimant was not disqualified from receiving benefits during the weeks at issue, and the record does not suggest any other basis for disqualification or ineligibility during those weeks, claimant was entitled to the benefits she received for those weeks. Accordingly, claimant was not overpaid benefits for the weeks at issue.

For these reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation, and was not overpaid benefits that she is required to repay to the Department.

DECISION: Order No. 24-UI-278333 is modified, as outlined above.

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

DATE of Service: February 24, 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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