

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0065

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 1, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0006957630). The employer filed a timely request for hearing. On January 6, 2025, ALJ Goodrich conducted a hearing, and on January 14, 2025 issued Order No. 25-UI-279824, reversing decision # L0006957630 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective May 26, 2024. On January 27, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Beyond Toxics employed claimant as an environmental justice policy manager from September 8, 2023 through May 31, 2024.

(2) In 2022, claimant graduated from law school. Claimant subsequently took the Oregon bar exam three times, but failed the exam each time. Claimant believed her failure to pass was due to having been working full-time while she was studying for the exam.

(3) In or around early 2024, claimant decided to take the bar exam again, this time in late July 2024, but realized that she could not effectively study for the exam while also working full time. On April 5, 2024, claimant met with the employer's executive director, to whom she reported. During the meeting, claimant told the executive director of her plan to take the exam again and suggested that she could take an approximately two-month leave of absence to study for the exam, to start on June 1, 2024. The executive director responded by suggesting that claimant would probably want to practice law after passing the bar exam, and that claimant might therefore be better served by quitting entirely so that she could study for the bar exam and then seek work in the legal field. Prior to this suggestion, claimant had

planned to continue working for the employer after she took the bar exam. However, claimant recognized the truth in what the executive director had said, and agreed that leaving work was her best course of action.

(4) As a result of their discussion on April 5, 2024, claimant and the executive director “mutually decided” that claimant would continue working for the employer through May 31, 2024, and would then quit to study for the bar exam and look for work in the legal field. Transcript at 32. Despite this, if claimant had pressed the issue, the executive director would have considered granting claimant a leave of absence to study for the bar, which would have allowed claimant to return to work for the employer after she took the exam. During the course of her employment, the employer never had any concerns with claimant’s performance.

(5) On May 31, 2024, claimant left work as planned to study for the bar exam, and did not return to work for the employer thereafter. Claimant learned in October 2024 that she had passed the bar exam, and subsequently found work practicing law.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work without good cause.

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).

At hearing, the employer initially asserted that claimant neither quit nor was discharged, while claimant asserted, similarly, that the work separation was the result of a “mutual” decision. Transcript at 5, 17. The Court of Appeals has held a “mutual” decision to separate is a voluntary quit, not a discharge. *See Smith v. Employment Division*, 34 Or App 623, 579 P2d 310 (1978) (“where the employer and the employee have ‘agreed upon a mutually acceptable date on which employment would terminate,’ the termination should be treated as a ‘voluntary leaving’ and not as a discharge”); *see also J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Thus, under the applicable caselaw, because the parties “mutually” decided to separate, the work separation was a voluntary quit.

The facts in the record further support the conclusion that the nature of the work separation was a voluntary quit. As a preliminary matter, claimant was not required to take and pass the bar exam as a condition of her employment. For personal reasons, claimant decided that she wanted to pursue taking the bar exam. Claimant also decided that she did not want to continue working full-time while preparing to take the exam. The record does not suggest the employer had concerns with the quality of claimant’s work or had intentions of terminating claimant’s employment. Instead, after claimant decided she wanted to take the bar exam and did not want to continue working full-time for the employer while studying for the exam, claimant approached the executive director about taking a leave of absence from work. The executive director responded by suggesting that claimant would probably want to practice law after passing the bar exam, and that claimant might therefore be better served by quitting entirely so that she could study for the bar exam and then seek work in the legal field. Claimant agreed with the director’s assessment. Claimant decided to leave work, rather than pursue a leave of absence so she

could seek work in the legal field if she passed the bar exam rather than continuing to work for the employer after taking the exam. Therefore, more likely than not, continuing work would have been available to claimant if she had decided to continue working, rather than to end the employment relationship to study to take the bar exam. Because she did not do so, but agreed that leaving work would be the best course of action, claimant effectively decided that she was no longer willing to work for the employer for an additional period of time after May 31, 2024. As such, the work separation was a voluntary quit which occurred on that date.

Voluntary Quit. 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.

As explained above, claimant voluntarily quit work so that she could study for the bar exam and then seek work in the legal field. To the extent that claimant quit to seek other work, claimant quit without good cause. Per OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work. Under ORS 657.190, whether work is “suitable” is determined by considering, “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 has not shown that her work as an environmental justice policy manager was unsuitable for her at the time she quit. In particular, while claimant held a law degree, she had not yet passed the bar or obtained a license to practice law at the time she was working for the employer. Therefore, even if the work eventually became unsuitable for claimant once she was qualified to work as an attorney, claimant’s prior training and experience at the time she quit were not sufficient to show that the work was unsuitable.

To the extent that claimant quit so that she could study for the bar exam, claimant also quit without good cause. It is understandable that, in light of having completed law school, claimant wished to take the bar exam again and pursue a legal career upon passage. It is also understandable, given claimant’s previous experiences with the exam, that she wished to take time off from work to study for the exam. However, wanting to pursue studying and taking the bar exam does not create a grave situation, especially since passing the bar exam was not a condition for claimant to continue working for the employer. Further, even if these circumstances were grave, claimant did not pursue reasonable alternatives to quitting. Specifically, the record shows that claimant did not pursue seeking a leave of absence for the study period and returning to work afterwards. Instead, claimant agreed with the employer’s suggestion to quit.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective May 26, 2024.

DECISION: Order No. 25-UI-279824 is affirmed.

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

DATE of Service: February 28, 2025

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

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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