

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0085

Reversed
No Disqualification, No Overpayment

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 22, 2024, and further concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$1,812 in benefits to be deducted from any benefits payable during the five year period following the week in which the decision became final (decision # L0006609023).¹ Claimant filed a timely request for hearing. On January 13, 2025, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on January 24, 2025, issued Order No. 25-UI-280947, affirming decision # L0006609023. On February 7, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) New England Lead Burning Co. Inc. employed claimant as a superintendent and lead foreman in their west coast division. The employer constructed lead-based radiation shielding materials. Claimant worked for the employer from June 2021 until September 25, 2024.²

(2) The employer had work projects throughout the United States and Canada. The work claimant performed for the employer usually required him to travel for weeks at a time.

(3) Claimant lived in Grants Pass, Oregon. In 2024, claimant determined that he was unable to be away from home for longer than a day or two because his grandparents and mother, who also lived in Grants Pass, needed his assistance. Claimant's grandmother had cancer, was confined to a wheelchair, and had broken her hip and her arm. She had fallen out of her wheelchair several times, and claimant was needed pick her up in the event of a fall. Claimant's grandfather was elderly and needed help with "house stuff."

¹ Decision # L0006609023 stated that claimant was denied benefits from September 22, 2024 to November 30, 2024. However, decision # L0006609023 should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 22, 2024 and until he earned four times his weekly benefit amount. See ORS 657.176.

² As discussed in Finding of Fact (8), claimant later worked a two- or three-day job for the employer in mid-October 2024 that involved traveling to Canada and spending a day there.

Audio Record at 6:21. Claimant intended for his mother to take the lead in assisting his grandparents, but as of September 2024, claimant's mother struggled with alcoholism and was "incapacitated a lot." Audio Record at 11:01.

(4) In September 2024, the employer began a work project at a hospital in Grants Pass. Claimant worked on the project. At or near this time, claimant became aware of a different prospective employer who also constructed lead-based radiation shielding materials. Claimant believed he could get a job with that prospective employer, and that working for that employer would not require him to travel.

(5) On September 24, 2024, claimant gave a letter to his general manager. In it, claimant stated, in pertinent part:

I'm at the point right now where traveling for long periods of time is not working right now. I have an opportunity here in the future to work in my area and spend more time at home with my family. I'm sure you can understand. In the meantime, if anything pops up around my house, and I can help in any way, please let me know.

Audio Record at 20:21.

(6) On September 25, 2024, while he was working on the Grants Pass hospital project, the employer's human resources (HR) department contacted him. The HR department informed claimant that his "employment was gonna end" and that the current project "basically . . . was just going to be it." Audio Record at 12:15. The employer had western and eastern divisions that had undergone a recent merger. Claimant believed that due to the merger, "the division back east made a decision that, if [claimant] was not going to travel . . . they were going to cut ties with [him]." Audio Record at 8:31. After being contacted by the HR department, claimant stopped working for the employer.

(7) Claimant claimed benefits for the weeks of September 22 through October 12, 2024 (weeks 39-24 through 41-24). The Department paid claimant \$604 in benefits for each of the weeks at issue, for a total of \$1,812.

(8) In the beginning of October 2024, the employer contacted claimant and requested he handle a job that involved inspecting a radiation shield door at a facility in Vancouver, British Columbia, Canada. On or about October 15, 2024, claimant traveled to Canada, spent a day there, and completed the job. The next day, claimant returned home to Grants Pass.

(9) Claimant was not offered a job by the prospective employer, and that prospective employer was not scheduled to have any work until late January or February 2025.

CONCLUSIONS AND REASONS: Claimant was discharged by the employer, but not for misconduct. Claimant therefore was not disqualified from receiving benefits based on the work separation, and is not liable for an overpayment of 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).

The work separation was a discharge that occurred on September 25, 2024. The record shows that on September 24, 2024, claimant gave the employer a letter in which he conveyed that traveling for long periods of time was burdensome, and that he expected, “in the future,” to have a work opportunity that would not require travel. Audio Record at 20:27. Claimant also conveyed that in “the meantime” he remained available for work near his home in Grants Pass. Audio Record at 20:31. Claimant’s letter therefore shows that he was willing to continue to work for the employer in the period of time before his expected future work opportunity arose, although that willingness was restricted to work either in the area near his home, or that did not involve being away from home for more than a few days. The next day, the employer’s HR department contacted claimant and advised that claimant’s “employment was gonna end” and that the project claimant was working on at the time “basically . . . was just going to be it.” Audio Record at 12:15.

The employer’s statement that claimant’s “employment was gonna end” was the first unequivocal act by either party that evinced a desire to sever the employment relationship. The work separation was a discharge because claimant was willing to continue to work for the employer, within certain limitations, for an additional period of time but was not allowed to do so by the employer as of September 25, 2024.

That claimant remained willing to work for the employer as of September 25, 2024, with some limitations, is further demonstrated by the fact that the prospective employer whom claimant believed he could get a job with that would allow him to stay home in Grants Pass was not scheduled to have any work until late January or February 2025. Further, after the work separation, when the employer requested claimant handle a job in October 2024 that involved traveling to Canada for a short period, claimant accepted the work. The fact that claimant traveled to Canada, spent a day there, and completed the job (which was consistent with his requirement to not be away from home for longer than a day or two) also supports that claimant had remained willing to work for the employer as of September 25, 2024, albeit with some limitations.

For these reasons, the work separation was a discharge that occurred on September 25, 2024.

Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. “As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.” OAR 471-030-0038(3)(a). “[W]antonly negligent’ means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.” OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer did not appear at hearing and therefore did not offer evidence as to why they discharged claimant. However, claimant testified that the employer had western and eastern divisions that had

undergone a recent merger. Audio Record at 8:29. Claimant believed that due to the merger, “the division back east made a decision that, if [claimant] was not going to travel . . . they were going to cut ties with [him].” Audio Record at 8:31. Thus, the record suggests that the employer discharged claimant because of his limited willingness to continue to travel for work.

The record fails to establish that claimant’s limited willingness to continue to travel for work amounted to a willful or wantonly negligent violation of the standards of behavior that the employer had the right to expect of him or a disregard of the employer’s interests. More specifically, the record fails to show claimant knew or should have known before being discharged that his limited willingness to continue to travel for work probably violated the employer’s expectations, and claimant therefore was not indifferent to the consequences of his actions. Nor does the record show that the employer’s expectations were reasonable under the circumstances, given claimant’s need to care for his grandparents, in light of his mother’s inability to do so. Accordingly, the employer discharged claimant, but not for misconduct, and claimant is not disqualified from receiving benefits based on the work separation.

Overpayment. At hearing, the witness for the Department testified that the \$1,812 overpayment the Department assessed against claimant was based upon decision # L0006609023’s conclusion that claimant had quit working for the employer without good cause on September 25, 2024, and was disqualified from receiving benefits effective September 22, 2024. Audio Record at 14:27 to 15:12.

As explained above, the record shows that claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the work separation. Therefore, claimant was not overpaid benefits for the weeks at issue, and is not liable for the \$1,812 overpayment that the Department had assessed as a result of the work separation.

DECISION: Order No. 25-UI-280947 is set aside, as outlined above.

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

DATE of Service: March 7, 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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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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