

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0106

Affirmed
Request for Hearing Timely Filed
No Disqualification

PROCEDURAL HISTORY: On September 17, 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 August 25, 2024 (decision # L0006412356).¹ On October 7, 2024, claimant filed a timely request for hearing that the Department did not recognize as a request for hearing. On October 8, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's October 8, 2024, late request, and on October 17, 2024, issued Order No. 24-UI-269878, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 31, 2024. On October 29, 2024, claimant filed a timely response to the appellant questionnaire.

On December 12, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-269878 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # L0006412356. On February 11, 2025, ALJ Janzen conducted a hearing, and on February 12, 2025, issued Order No. 25-UI-282954, concluding that claimant had filed a timely request for hearing on decision # L0006412356, and reversing decision # L0006412356 by concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation. On February 18, 2025, the employer filed an application for review of Order No. 25-UI-282954 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. 25-UI-282954 concluding that claimant had filed a

¹ Decision # L0006412356 stated that claimant was denied benefits from September 1, 2024, to August 30, 2025. However, as decision # L0006412356 found that claimant quit on August 30, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 25, 2024, and until she earned four times her weekly benefit amount. See ORS 657.176.

timely request for hearing on decision # L0006412356. That part of Order No. 25-UI-282954 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) Douglas County employed claimant as a solid waste transfer site attendant from February 2019 through August 30, 2024.

(2) The employer did not permit employees to accept gifts from members of the public over \$50 in value.

(3) As a transfer site attendant, claimant's duties consisted of facilitating the disposal of solid waste brought in by consumers. Claimant was posted at a booth beyond the front gate of the facility, and would take payment for the waste the customer was there to dispose of before directing the customer to the appropriate disposal area. Claimant worked at three such transfer sites owned by the employer during her course of employment. The employer considered any items disposed of and paid for at one of their transfer sites to be the property of the employer.

(4) On August 29, 2024, claimant received a broken lawnmower at work from a person she knew. This person had previously offered the lawnmower to claimant, as her husband was a mechanic and believed he could fix it and then use it. At claimant's instructions, the person left the lawnmower next to claimant's parked truck and then left. Claimant's son later came and picked up the lawnmower and brought it to claimant's house. Claimant had made similar arrangements with other people on multiple occasions in the past, and believed they were permitted by the employer.

(5) The employer learned about claimant's receipt of the broken lawnmower by reviewing security footage of the site at which claimant had been working. The employer subsequently determined that claimant's receipt of the lawnmower was a violation of their policies regarding accepting gifts from the public, and also constituted theft of the employer's property. On August 30, 2024, two members of management met claimant at the transfer site, confronted her with her actions from the previous day, and told her that they would "call the sheriff on [claimant] unless [she] packed [her] stuff and left." Transcript at 15–16. Upon hearing this, claimant, who already felt intimidated by the encounter, "started shaking" in fright. Transcript at 18. One of the managers then asked claimant, "Do you resign?" Transcript at 18. Claimant agreed to resign, and left shortly thereafter.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with 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).

The facts regarding the circumstances under which claimant separated from work are in dispute. At hearing, claimant asserted that she felt that she did "not voluntarily" quit, but instead agreed to resign when her managers forced her to choose between resignation or potential arrest for alleged theft. Transcript at 14. The employer's witness, by contrast, essentially testified that claimant quit in lieu of facing disciplinary measures for alleged theft and policy violations. Transcript at 26. As explained in

detail below, where the parties' accounts differed, the record supports finding in accordance with claimant's account. Regardless, both parties testified that claimant chose to stop working for the employer, and neither indicated that the employer was, at the point she left work, unwilling to continue employing claimant for at least some additional period of time. While claimant may have felt that she had to choose between two poor options—either resign or face the consequences the employer threatened her with—she nevertheless *chose* to resign. Therefore, the work separation was a voluntary leaving.

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). 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, according to her testimony, her managers threatened to have her arrested for alleged theft of the employer's property if she did not resign. Transcript at 14. As a preliminary matter, while claimant asserted that this was the reason she quit, the employer's witness instead asserted that claimant quit because the managers “presented [claimant] with being placed on paid administrative leave pending the outcome of an investigation into several personnel and county rule violations” regarding the events of August 29, 2024. Transcript at 26–27. However, the employer's witness, a human resources analyst, also testified that she was not present for the interaction that led claimant to quit. Transcript at 26. Because claimant's testimony was based on her first-hand experience, and the employer's witness offered only hearsay testimony as to what happened, claimant's testimony is given greater weight. Therefore, the facts regarding the events that led to claimant's decision to quit have been found in accordance with claimant's testimony.

Claimant quit for a grave reason. Given the threat issued by her managers, it can be presumed that, had claimant not quit, they would have followed through on the threat and attempted to have her arrested. It is impossible to say whether law enforcement would have actually arrested claimant, or whether she would have faced criminal charges, had the employer contacted them. Despite the employer's witness's testimony to the contrary, however, the suggestion that claimant actually committed theft of the employer's property is not supported by the record. The employer's witness testified, “...once [a customer] is driving through the [front] gates onto county property and they come up to the booth they're expected to pay for whatever they're tossing away.” Transcript at 32. She further testified, “Once a piece of property... is brought onto the transfer site it is now property of [the employer].” Transcript at 30.

Thus, the employer's contention here appears to be that, by accepting the broken lawnmower, claimant deprived the employer of both the disposal fee that otherwise would have been paid, and any residual value remaining in the lawnmower itself. However, the employer offered no evidence to show that a person automatically surrenders their property merely by bringing it onto the employer's site, as opposed to *agreeing* to surrender the property after paying a disposal fee. Here, the person who gave

claimant the lawnmower neither paid the disposal fee nor surrendered the lawnmower to the employer, and the employer never took possession of the lawnmower. Thus, nothing about this transaction indicates that the employer ever owned the lawnmower. Instead, the record shows that the sole parties to the transaction were claimant and the lawnmower's former owner, with whom claimant was already acquainted. As such, claimant could not have committed theft of the employer's property. Additionally, to the extent that the employer was suggesting that claimant's actions violated their policies regarding accepting gifts from the public, such an assertion is also not supported by the record, as the record shows that the policy prohibited gifts above \$50 in value, but fails to show that the broken lawnmower retained more than that amount in value.

Whether claimant committed theft, or otherwise violated the employer's policies, is not inherently dispositive as to whether she had good cause to quit. However, claimant's testimony suggested that she believed she had done nothing wrong by accepting the lawnmower from her acquaintance. The above considerations show that claimant's belief here was reasonable. Thus, the record supports the inference that claimant quit work because, despite her belief that she had done nothing wrong, she was suddenly and unexpectedly forced to choose between quitting and facing potential arrest.

Claimant testified that, at the time she quit, she was frightened and "shaking like a leaf" over the threat of arrest that her managers had just issued. Transcript at 18. Under such circumstances, a reasonable and prudent person, believing in their innocence but nevertheless scared at the possibility of being arrested, would have quit rather than risk arrest. Further, claimant had no reasonable alternative but to quit. The only option available to claimant, other than being potentially arrested, was quitting. Thus, claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit. Claimant therefore quit with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-282954 is affirmed.

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

DATE of Service: March 19, 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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