EO: Intrastate
BYE: 11-Oct-2025

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

049
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0113

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 14, 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 October 6, 2024 (decision # L0007234308).[1] Claimant filed a timely request for hearing. On January 28, 2025, ALJ Ensign conducted a hearing at which the employer failed to appear, and on February 11, 2025, issued Order No. 25-UI-282850, affirming decision # L0007234308. On February 20, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered the parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Collins Pine Co. employed claimant as an accountant from May 1, 2023, until October 10, 2024.

(2) One of claimant's job tasks was to take a facility's month's end inventory numbers and produce reports. The employer allocated four days for claimant to complete this task. However, each month, claimant received the inventory numbers from the facility two days late. Claimant's late receipt of the inventory numbers caused him to miss the deadline to produce the reports each month. Claimant worked 70 to 80 hours per week while working on the month's end reports but always missed the deadline.

(3) In the first months of his employment, the employer did not enforce the deadline. Later, the employer insisted that the reporting deadline be met. Claimant raised with the employer that he received

[1] Decision # L0007234308 stated that claimant was denied benefits from October 6, 2024, to October 18, 2025. However, decision # L0007234308 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.

the inventory numbers late and that additional factors, such as antiquated computer systems and the employer's insistence that claimant "figure . . . out on [his] own" a particular aspect of the reports, also contributed to claimant missing the deadlines. Transcript at 9. However, the employer maintained that the four days allocated to produce the reports allowed sufficient time to meet the deadline, regardless of the presence of the other factors.

(4) On October 10, 2024, claimant's supervisor and human resources (HR) manager met with claimant. In the meeting, the supervisor and HR manager presented claimant with the option of either continuing to work for the employer under a performance improvement plan or ending his employment via a mutual separation agreement.

(5) The performance improvement plan would establish a 90-day period in which claimant was expected to meet all deadlines. Under the plan, claimant would meet with his supervisor on a weekly basis to discuss the plan's status, which would include time for claimant to "ask questions if [he] need[ed] clarification on a specific issue." Exhibit 1 at 8. However, the plan noted that "[c]oncessions" had already "been provided due to poor systems," and did not offer any specific means of helping claimant meet deadlines. Exhibit 1 at 8. The plan was to exist for 90 days, but stated that claimant could be "terminated at any time during this process for failure to attempt to meet objectives." Exhibit 1 at 8.

(6) The mutual separation agreement called for claimant and the employer to agree to terminate claimant's employment effective October 10, 2024. *See* Exhibit 1 at 4-7. It would require claimant to return all property of the employer and release any potential claims against the employer. In exchange, the employer was to pay claimant's salary through October 15, 2024, and agree to not contest any unemployment insurance claim that claimant might file.

(7) During the meeting, claimant raised that the deadlines he missed were driven by the fact that he received the inventory numbers late, as well as issues with the employer's antiquated computer systems and the like. The supervisor and HR manager said those issues were irrelevant and that the four days allocated allowed sufficient time to meet the deadlines.

(8) Claimant was concerned that if he continued to work for the employer under the performance improvement plan, he would be discharged. Claimant was 60 years old. He had been discharged from a job once before, when he was much younger, and was unable to find a new job for a year. Because of anticipated age discrimination, coupled with claimant's experience that prospective employers tend to be less willing to offer work to job seekers who have been discharged, claimant feared that if the employer discharged him, he would have substantial difficulties finding a new job.

(9) Claimant's failed attempts to meet the deadline placed him under significant stress. As a result of the stress, claimant experienced anxiety, stomach and bowel problems, and insomnia. Claimant saw a doctor about these problems and received anti-anxiety medication, which addressed his insomnia to a degree. When claimant had been discharged when he was younger, the lengthy period of unemployment following the discharge caused him to have severe anxiety and depression. Claimant was concerned that if he was discharged again, his severe anxiety and depression would return.

(10) Because claimant had always missed the deadline, the performance improvement plan did not offer any help in meeting the deadline, and the employer's response that the issues claimant had raised were

irrelevant, claimant reasoned that he would continue to miss the deadline and be discharged if he accepted the performance improvement plan. Claimant further reasoned that a discharge would impair his prospects for future employment, cause a prolonged period of unemployment, and lead to severe anxiety and depression. Claimant therefore accepted the mutual separation agreement.

(11) Pursuant to the mutual separation agreement, claimant ended his employment for the employer on October 10, 2024.

CONCLUSIONS AND REASONS: Claimant voluntarily left 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 work separation was a voluntary leaving that occurred on October 10, 2024. On that date, the employer presented claimant with the option to continue working for them under a performance improvement plan or to accept a mutual separation agreement and end his employment. Claimant chose to accept the mutual separation agreement and ended his employment that day. Thus, claimant could have continued to work for the employer for an additional period of time but was unwilling to do so. The work separation was therefore a voluntary leaving.

Case law supports this conclusion. Because the mutual separation agreement established a "mutually acceptable date" on which claimant's employment would end and was "agreed upon" by claimant and the employer, the work separation was a voluntary leaving. *Employment Department v. Shurin*, 154 Or App 352, 356, 959 P2d 637 (1998), quoting *Smith v. Employment Division*, 34 Or App 623, 627, 579 P2d 310 (1978) ("We have consistently held that, 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).

Accordingly, the work separation was a voluntary leaving that occurred on October 10, 2024.

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). "[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. Leaving work without good cause includes resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. OAR 471-030-0038(5)(b)(G).

The order under review concluded that claimant voluntarily left work without good cause. Order No. 25-UI-282850 at 3-4. The order reasoned that claimant was not presented with a grave situation because it was not imminent or inevitable that he would be discharged. Order No. 25-UI-282850 at 3-4. The order also reasoned that claimant's ability to find a new job would be equally impaired whether he was discharged or had resigned. Order No. 25-UI-282850 at 4. The record does not support the conclusion that claimant left work without good cause.

Under *McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010), it is possible to establish good cause for a voluntary leaving if an individual quits work to avoid being discharged, not for misconduct, when the discharge is certain and would impair the individual's future job prospects. Claimant's circumstances satisfy these criteria.

Claimant faced a discharge that was certain to occur. The performance improvement plan required claimant to meet all deadlines going forward, yet claimant had always missed the month's end reporting deadline. The plan did not offer any help in meeting the month's end deadline, specified that certain "[c]oncessions . . . due to poor systems" had already been made, and when claimant explained the issues that caused him to miss the deadline each month, the supervisor and HR manager told him those issues were irrelevant. Exhibit 1 at 8. Further, the plan authorized the employer to discharge claimant at any time during the 90-day plan period "for failure to attempt to meet objectives." Exhibit 1 at 8. The record shows that had claimant continued to work under the plan, he would have missed the next month's end deadline, just as he had missed every previous deadline to that point, and the employer would have inevitably discharged him for violating the plan's requirement to meet all deadlines going forward. More likely than not, this discharge would have occurred either at the conclusion of the 90-day plan period or when claimant missed the next reporting deadline at the end of October or start of November 2024, since the employer could discharge claimant at any time "for failure to attempt to meet objectives."

The inevitable discharge claimant faced would have impaired claimant's future job prospects. Claimant was 60 years old, and had been discharged from a job once before, when he was much younger. Afterward, he was unable to find a new job for a year. Because of age discrimination, coupled with claimant's experience that prospective employers tend to be less willing to offer work to job seekers who have been discharged, claimant feared that if the employer discharged him, he would have substantial difficulties finding a new job. This concern was well-founded. While voluntarily leaving his job placed claimant in a somewhat similar position—without a job and 60 years old—the record shows that claimant was in a better position to find a new job by resigning than by being inevitably discharged. Doing so allowed claimant to avoid the stigma associated with being discharged that had contributed to him being unable to find a new job for a year when he had been discharged earlier in his life. Claimant's resignation therefore allowed claimant to avoid the impairment to his future job prospects that he would have faced after being discharged.

Similarly, when claimant had been discharged when he was younger, the lengthy period of unemployment following the discharge caused him to have severe anxiety and depression. The record shows that the length of claimant's period of unemployment was tied to claimant's experience that prospective employers tend to be unwilling to offer work to job seekers who have been discharged. By voluntarily leaving, rather than being discharged, claimant likely avoided the comparatively longer period of unemployment associated with the stigma of discharge. This, in turn, placed claimant in a

position to avoid the severe anxiety and depression that he had experienced during the year of unemployment that occurred after he was discharged when he was younger.

Although the record shows that claimant's discharge was certain to occur, the discharge was not imminent at the time of October 10, 2024, voluntary leaving. This is so because the discharge would occur possibly as many as 90 days after October 10, 2024. Nevertheless, this lack of imminence does not preclude a conclusion that claimant had good cause to quit. The record shows that the employer was certain to discharge claimant either at the conclusion of the 90-day plan period or when claimant missed the next reporting deadline at the end of October or start of November 2024. To continue to work for the employer in a futile attempt to preserve his employment under the plan while the precise date of his discharge was unknown and could occur at any time, contributed to the gravity of claimant's situation. Quitting when claimant did on October 10, 2024, benefitted him because the stress resulting from claimant's failed attempts to meet the deadline caused him anxiety, insomnia (addressed to some degree by medication), and stomach and bowel problems. These stress-induced mental and physical health problems were likely to worsen had claimant opted to work in futility under the performance improvement plan without knowing exactly when the employer would discharge him.

Finally, the record shows that the inevitable discharge claimant faced would have been a discharge that was not for misconduct.[2] The record shows that claimant missed the deadline to produce the reports each month because the inventory numbers from the facility came in late and because of other factors related to the employer's antiquated computer systems and the employer's insistence that claimant "figure . . . out on [his] own" a particular aspect of the reports. Transcript at 9. Claimant worked 70 to 80 hours per week while working on the reports but despite his best efforts, always missed the deadline. The employer took no action to address the issues responsible for claimant missing the deadline, as they maintained that the timeframe allocated to produce the reports allowed sufficient time to meet the deadline, regardless of the presence of the other factors. When claimant raised these other factors at the October 10, 2024, meeting, his supervisor and HR manager said they were irrelevant. On this record, the weight of the evidence does not show that claimant missed the deadline as the result of a willful or wantonly negligent violation of the employer's standards of behavior or disregard of their interests. Therefore, claimant's inability to meet the reporting deadline was not misconduct connected with work. Accordingly, the inevitable discharge claimant faced was not for misconduct.

For these reasons, the record shows that claimant quit working for the employer to avoid being discharged, not for misconduct, and that the discharge claimant faced was certain to occur, would impair his future job prospects, and continuing to work in futility under the improvement plan would worsen claimant's mental and physical health problems. Claimant therefore quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

[2] As noted above, leaving work without good cause includes resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. OAR 471-030-0038(5)(b)(G). "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).

DECISION: Order No. 25-UI-282850 is set aside, as outlined above.

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

DATE of Service: March 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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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