

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0131

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause, disqualifying claimant from receiving benefits effective September 29, 2024 (decision # L0007551146).¹ Claimant filed a timely request for hearing. On February 7, 2025, ALJ Allen conducted a hearing, and on February 19, 2025, issued Order No. 25-UI-283407, modifying decision # L0007551146 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective October 6, 2024.² On February 27, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: The order under review stated that no exhibits were offered or admitted into evidence. Order No. 25-UI-283407 at 1. However, at hearing, the ALJ admitted one page of claimant's submitted documents, a statement dated September 16, 2024, that was written by the manager of claimant's store. Because the ALJ failed to mark the exhibit, EAB has, as a clerical matter, identified the exhibit based on the description of the document in the record, and marked it as Exhibit 1. Transcript at 44.

WRITTEN ARGUMENT: Claimant did not state that he provided a copy of his argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as

¹ Decision # L0007551146 stated that claimant was denied benefits from November 10, 2024, to November 8, 2025. However, as decision # L0007551146 found that claimant quit on October 3, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 29, 2024, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

² Although Order No. 25-UI-283407 stated it affirmed decision # L0007551146, it modified that decision by changing the beginning date of the disqualification to October 6, 2024. Order No. 25-UI-283407 at 4.

required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Rite Aid employed claimant as a shift leader at their retail store in Prineville, Oregon from April 7, 2023, to October 9, 2024.

(2) Between 10 and 20 years prior to working for the employer, claimant accrued multiple convictions for driving under the influence of intoxicants (DUII), which ultimately resulted in a “lifetime revocation” of his driver’s license. Transcript at 21. Claimant did not have a valid driver’s license while he was working for the employer.

(3) Claimant lived approximately ten miles from the employer’s store in Prineville. No public transportation or rideshare options existed in claimant’s area, and claimant therefore was unable to get to work by any means other than driving his own vehicle. As such, claimant commuted to work by driving his own vehicle, despite not having a valid driver’s license. Claimant understood that he was violating the law by driving his vehicle to work, that he could face legal consequences such as incarceration for doing so, and that this could lead to losing his job.

(4) In early September 2024, claimant was charged with misdemeanor driving while suspended or revoked³ because he was driving without a valid license. At the time that he was charged, claimant was in the process of applying for a restoration order to have his license reinstated, which he had learned about some time prior to incurring the misdemeanor charge. No such order had yet been granted at the time that claimant incurred the charge. After being charged, claimant also learned of the possibility of applying for a hardship permit with Oregon Driver and Motor Vehicle Services (DMV). Such a permit, if granted, would have allowed claimant to legally drive his vehicle to and from work.

(5) Claimant was convicted of misdemeanor driving while suspended or revoked, and was sentenced to 45 days in custody, to begin on October 3, 2024. On or around September 11, 2024, after he was sentenced, claimant informed his manager of what had occurred. Claimant’s manager suggested that he should apply for a personal leave of absence, but that such a leave, if granted, would last for no more than 30 days. On September 16, 2024, claimant applied for the leave of absence. Claimant also contacted his attorney, who suggested to claimant that the sentence could be shortened to 30 days so that claimant could stay within the allotted time for a leave of absence.

(6) On September 26, 2024, the employer mailed claimant a notice stating that his request for a leave of absence had been denied because the employer did not grant leaves of absence for incarceration. Claimant did not receive the letter prior to entering custody.

(7) On October 2, 2024, claimant worked his last shift for the employer. On October 3, 2024, claimant entered custody to begin serving his sentence.

(8) On October 9, 2024, while still in custody, claimant spoke with his manager on the phone. During the call, the manager informed claimant that his request for a leave of absence had been denied. The manager also told claimant that if he was “not able to return to work [he] would be... terminated and

³ *See* ORS 811.182.

unhireable for failure to report to work,” but if he instead resigned he would be eligible for rehire. Transcript at 12. In response, claimant told his manager that he was resigning. Claimant quit to avoid being discharged, so that he would be eligible for rehire with the employer once he was released from custody.

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

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. Per OAR 471-030-0038(5)(f), where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4).

Claimant voluntarily quit work because, after being sentenced to a period of incarceration, he learned that if he did not quit he would likely be discharged for failing to return to work, and that being discharged for this reason would render him ineligible for rehire with the employer. Given the likelihood of his discharge if he did not quit and the consequences of being discharged, claimant faced a grave situation. However, because the gravity of claimant’s situation was the result of his own deliberate actions, claimant’s actions which led to that grave situation must be considered under OAR 471-030-0038(5)(f).

The action that led to claimant’s grave situation was his decision to drive his vehicle while his license was suspended or revoked. Claimant knew that doing so risked the outcome that ultimately did occur—criminal charges that resulted in incarceration—but took that risk because he had no other way to get to work. However, the record also shows that claimant had two options available to him that could have allowed him to drive himself to work legally: either to apply for a hardship permit with the DMV, or move for a restoration order. At hearing, claimant explained that he that he had sought, but not yet been granted, a restoration order at the time he was charged with driving while suspended or revoked, and that he did not know about the possibility of applying for a hardship permit until after he incurred the charge. Transcript at 22–23.

However, claimant did not explain why he had not sought either a restoration order or a hardship permit at any point prior to the events at issue in this matter. A reasonable and prudent person in claimant’s circumstances, who was unable to legally drive to work due to the revocation of their license and had no alternate means of transportation, would have made an earlier effort to determine whether there existed an option for them to resume driving legally, and likewise would have pursued those options as early as possible in an effort to avoid the outcome that claimant experienced. Doing so would have been a reasonable alternative to quitting. Because claimant did not do so, he failed to seek reasonable

alternatives to the grave situation that ultimately caused him to quit. Therefore, claimant quit without good cause.

For the above reasons, claimant quit work without good cause and is disqualified from receiving benefits effective October 6, 2024.

DECISION: Order No. 25-UI-283407 is affirmed.

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

DATE of Service: April 2, 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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