EO: Intrastate
BYE: 18-Oct-2025

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

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EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0132-R

EAB Decision 2025-EAB-0132 Reversed on Reconsideration
Late Application for Review Allowed
Order No. 25-UI-282289 Affirmed
Disqualification

PROCEDURAL HISTORY: On November 12, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits from October 20, 2024, to October 18, 2025 (decision # L0007126846).[1] Claimant filed a timely request for hearing. On January 29, 2025, ALJ Frank conducted a hearing, and on February 6, 2025, issued Order No. 25-UI-282289, modifying decision # L0007126846 by concluding claimant quit work without good cause and was disqualified from receiving benefits effective October 13, 2024.[2] On February 26, 2025, Order No. 25-UI-282289 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 28, 2025, claimant filed a late application for review of Order No. 25-UI-282289 with EAB. On March 7, 2025, EAB issued EAB Decision 2025-EAB-0132, dismissing claimant's application for review as late without good cause. On its own motion, EAB has reconsidered EAB Decision 2025-EAB-0132. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019) as necessary to complete the record. The additional evidence is decision # L0009138957 and claimant's March 8, 2025, explanation for filing the application for review late, marked as EAB Exhibits 1 and 2, respectively. Copies are provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send

[1] Decision # L0007126846 stated that claimant was denied benefits from October 20, 2024 to October 18, 2025. However, as decision # L0007126846 concluded that the work separation occurred on October 16, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, October 13, 2024 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

[2] Although Order No. 25-UI-282289 stated it affirmed decision # L0007126846, it modified decision # L0007126846 by changing the beginning date of the disqualification from October 20, 2024, to October 13, 2024. Order No. 25-UI-282289 at 3.

their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibits will remain in the record.

FINDINGS OF FACT: (1) Advanced Tribal, LLC employed claimant in various roles at their construction business from July 1, 2023, through October 17, 2024.

(2) The employer paid their construction employees prevailing wage rates as determined by the Oregon Bureau of Labor and Industries (BOLI), dependent on the type of work performed. In October 2024, the hourly rate paid for carpentry work was $45.97; for general laborer work, $37.41; and for flagging work, $31.39.

(3) At the beginning of the project claimant was working on in October 2024, claimant was paid at the carpentry rate. On or around October 7, 2024, the employer's owner notified claimant that they determined the work he was performing did not meet BOLI's definition of carpentry work, and that he would therefore be paid the laborer rate for his work going forward. Claimant was upset by this determination.

(4) The owner did not have work on the existing project to offer claimant that could be paid at the carpentry rate. However, the employer offered claimant the option to transfer to a different project that had carpentry-rate work available. Claimant declined, telling the employer that he believed it was a "trick." Audio Record at 23:20. Claimant continued to work for the laborer rate on the existing project.

(5) On Friday, October 11, 2024, claimant notified the owner that he had been paid at the flagger rate, rather than the laborer rate, for 36 hours in his most recent paycheck. This error resulted from claimant failing to identify the proper work category for these hours on his timesheet. On Monday, October 14, 2024, the owner corrected the error in the payroll system so that claimant would receive the amount of the shortage, totaling $216.72, in his next paycheck.[3]

(6) On October 17, 2024, claimant notified the employer shortly after beginning his shift that he was quitting work with immediate effect. Claimant cited his dissatisfaction with the payroll error and the payment of wages at the laborer rate instead of the carpentry rate as his reasons for quitting. Claimant did not work for the employer thereafter. Claimant was unaware at the time of his resignation that the employer had fixed the payroll error and that the amount of the shortage would be added to his next paycheck.

(7) On February 6, 2025, Order No. 25-UI-282289 was mailed to claimant's address of record on file with the Office of Administrative Hearings (OAH), modifying decision # L0007126848 by changing the effective date of claimant's disqualification from October 20, 2024, to October 13, 2024. Order No. 25-UI-282289 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 25-UI-282289 at 3. Order No. 25-UI-282289 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 26, 2025, to be timely." Claimant received Order No. 25-UI-282289 shortly after it was mailed.

[3] $37.41 - $31.39 = $6.02 difference between laborer rate and flagger rate. $6.02 x 36 hours = $216.72.

(8) On February 10, 2025, the Department issued decision # L0009138957. Decision # L0009138957 purported to amend decision # L0007126848, but concluded, identically, that claimant voluntarily quit work without good cause and was disqualified from receiving benefits from October 20, 2024, to October 18, 2025. EAB Exhibit 1 at 1. Decision # L0009138957 stated, "You have the right to request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **March 3, 2025**. EAB Exhibit 1 at 2-3 (emphasis in original). As a result of the issuance of decision # L0009138957, claimant believed that he had until March 3, 2025, to appeal Order No. 25-UI-282289. *See* EAB Exhibit 2 at 1.

(9) On February 28, 2025, claimant filed a late application for review of Order No. 25-UI-282289 with EAB.

(10) On March 7, 2025, EAB issued EAB Decision 2025-EAB-0132, dismissing claimant's application for review as late without good cause. EAB was unaware at that time that decision # L0009138957 had been issued, but later learned of it.

CONCLUSIONS AND REASONS: EAB Decision 2025-EAB-0132 is reconsidered on EAB's own motion. On reconsideration, EAB Decision 2025-EAB-0132 is reversed. Claimant's late application for review is allowed. Claimant voluntarily quit work without good cause.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion, to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019).

EAB has reconsidered EAB Decision 2025-EAB-0132 on its own motion to correct a previous error of fact or law. At the time EAB Decision 2025-EAB-0132 was issued, EAB was unaware that the Department had provided claimant with conflicting and confusing information regarding his right to appeal Order No. 25-UI-282289, as discussed in greater detail below. As a result, the decision erred in concluding that claimant lacked good cause to file a late application for review. Accordingly, EAB has reconsidered EAB Decision 2025-EAB-0132 on its own motion. On reconsideration, EAB Decision 2025-EAB-0132 is reversed for the reasons described herein.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 25-UI-282289 was due by February 26, 2025. Because claimant filed his application for review on February 28, 2025, it was late. Prior to the February 26, 2025, filing deadline, the Department issued decision # L0009138957, which purported to amend the administrative decision that was modified by Order No. 25-UI-282289 (although it did not accurately reflect the outcome stated in the order).[4] Decision # L0009138957 also stated that claimant could request another hearing on the work separation at issue in Order No. 25-UI-282289 by March 3, 2025. It can reasonably be inferred that the Department issued decision # L0009138957 in error, given its inconsistency with Order No. 25-UI-282289 and its statement that claimant could request another hearing in the matter.[5] In the written statement claimant provided to EAB explaining why the application for review was filed late, he asserted that he understood the "due date to file an appeal" to be March 3, 2025, and attached the page of decision # L0009138957 erroneously stating that he had the right to request another hearing by that date. EAB Exhibit 2 at 1-2.

The Department's erroneous issuance of decision # L0009138957 was a circumstance beyond claimant's reasonable control that prevented him from timely filing an application for review by providing conflicting and confusing information about his appellate rights. Good cause to extend the filing deadline has therefore been shown. As claimant filed his late application for review on February 28, 2025, two days after the filing deadline, it was filed within a "reasonable time." Accordingly, claimant's late application for review is allowed.

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.

A claimant who leaves work due to a reduction in pay has left work without good cause unless "the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department." OAR 471-030-0038(5)(d).

* * *

[4] Decision # L0009138957 was likely generated as a result of the Department attempting to update their computer system to reflect Order No. 25-UI-282289's modification of the effective date of claimant's disqualification from benefits, and not because the Department intended to issue a modified administrative decision.

[5] *See* ORS 657.270(6), providing that an application for review by the Employment Appeals Board is the exclusive remedy for any party, including the Department, disagreeing with an ALJ's order before that order has become final. *See also* ORS 657.290, providing for the Department's reconsideration of an administrative decision through continuous jurisdiction only after it has become final.

> (A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.
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> * * *

Claimant quit working for the employer because of a payroll error resulting in a shortage in his most recent paycheck, and the employer's determination that he was entitled to be paid at the laborer, rather than carpenter, rate. Claimant testified that just prior to notifying the owner of his resignation on October 17, 2024, he was unaware that the payroll error had been fixed, and considered the error proof that the employer had "doubled down" on the change in pay rate. Audio Record at 25:55. Claimant testified that in response to complaining about these issues, the owner said, "If you're going to be miserable here you can just leave," at which point claimant resigned. Audio Record at 26:10. However, claimant was asked at hearing if he would have quit work at that time if the owner had not made that statement, and claimant testified that he did not know.[6] Audio Record at 9:50. Claimant was also asked if he would have quit work at that time if the payroll error had not occurred, and he answered, "No." Audio Record at 10:06. Therefore, more likely than not, claimant quit work only because of the change in pay rate and the payroll error.

With respect to the payroll error, which amounted to a shortage of $216.72, the owner testified that it was caused by claimant's failure to properly identify the type of work on his timesheet, and that the error was corrected in the payroll system on the next business day after claimant notified him of the error. Audio Record at 16:41, 26:40. In rebuttal, claimant suggested that the error was not his fault because he "filled out [his] timecard consistently the same way the entire time" he worked for the employer. Audio Record at 12:30. In weighing this testimony, claimant has not shown by a preponderance of the evidence that he did not cause the error, and the facts have been found accordingly. Additionally, claimant did not fully rebut the owner's testimony that he promptly fixed the error, and that payment of the shortage would be made in the next paycheck. Claimant testified that he did not remember whether the owner responded that he intended to fix the error when first told of it, but believed "it was something that [the owner] would say." Audio Record at 13:40. Claimant also testified that he was unaware the error had been "fixed" at the time he quit work. Audio Record at 26:40. In weighing this testimony, claimant failed to show by a preponderance of the evidence that the employer was indifferent to the error or did not promptly act to correct it.

Under some circumstances, unfair labor practices such as an employer's failure to pay wages owed can give rise to a grave situation. *See, e.g., J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI). Here, however, the employer failed to pay claimant his full earnings not because they disputed claimant's entitlement to the earnings, but because of a payroll error claimant himself caused.

[6] The record does not suggest that the owner intended by this statement to convey that claimant was not allowed to continue working, or that claimant interpreted it as such. Therefore, the work separation was a voluntary leaving. *See* OAR 471-030-0038(2)(a) and (b), distinguishing a voluntary leaving from a discharge.

Further, the employer acted promptly to address the error, which amounted to a relatively small portion of a single paycheck. Under these circumstances, claimant did not face a grave situation as a result of the error. Moreover, where a pay dispute involves only previously-earned wages and unfair labor practices are not reasonably expected to recur, as is the case here, an employee has the reasonable alternative to quitting of continuing to work while pursuing recovery of the disputed earnings. *See Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999). Therefore, even if claimant had faced a grave situation as a result of the error, he had a reasonable alternative to quitting work.

Similarly, the change in claimant's rate of pay did not constitute a grave situation. Claimant testified that the reduction in rate from $45.97 per hour to $37.41 per hour corresponded with a reassignment of job duties from carpenter to laborer. Audio Record at 8:30. Therefore, under OAR 471-030-0038(5)(d)(A), the analysis specific to reductions in pay is inapplicable, and the standard gravity analysis applies. The owner testified that when he notified claimant that carpentry work would no longer be available to him for the project on which he had been working, he offered claimant a transfer to a different project where carpentry work at the corresponding rate was available. Audio Record at 23:50. The owner further testified that claimant replied that he would "have to think about it," and the next day told the owner that he "wasn't sure" about the transfer because he felt that it was a "trick," and did not accept it. Audio Record at 24:28. Claimant failed to rebut this testimony or satisfactorily explain his reasons for refusing the transfer.

Therefore, while claimant experienced a more than 16 percent reduction in his hourly wage corresponding to a reassignment of duties, the reduction was avoidable had claimant agreed to transfer to available carpentry work. As such, this was not a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Moreover, even if the change in pay rate was a grave situation, the record fails to show why transferring to the other project to receive the higher pay rate was not a reasonable alternative to leaving work. Accordingly, claimant quit work without good cause.

For these reasons, EAB Decision 2025-EAB-0132 is reversed on reconsideration. Claimant's late application for review is allowed. Claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective October 13, 2024.

DECISION: EAB Decision 2025-EAB-0132 is reversed on reconsideration. Claimant's late application for review is allowed. Order No. 25-UI-282289 is affirmed.

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

DATE of Service: <u>April 8, 2025</u>

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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