

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0138**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 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 November 17, 2024 (decision # L0007918513).<sup>1</sup> Claimant filed a timely request for hearing. On February 11, 2025, ALJ Ensign conducted a hearing at which the employer failed to appear, and on February 12, 2025, issued Order No. 25-UI-282926, affirming decision # L0007918513. On March 3, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) MAC-Brothers Corporation employed claimant, most recently as a bartender and server, from April 30 through November 23, 2024.

(2) In early to mid-November 2024, claimant began working with a new manager. While claimant was serving as bartender, the manager would often be under the influence of alcohol or serve himself alcohol while performing work tasks. Claimant believed that these actions violated Oregon Liquor and Cannabis Commission (OLCC) rules, and that as a bartender officially on duty, claimant could be held responsible for these violations. Claimant and other employees would speak with the manager about their concerns over this behavior, to no avail.

(3) On November 22, 2024, claimant and the manager were working together at the bar, with the manager scheduled to work the closing portion of the shift. At some point, the manager directed claimant to assume the closing responsibilities so that the manager could stop working early, and claimant agreed. The manager then began to drink alcohol at the bar, while also performing work tasks such as greeting customers, bussing tables, delivering drinks, and instructing employees on their work. Eventually, claimant believed the manager to be “real drunk.” Audio record at 22:29.

<sup>1</sup> Decision # L0007918513 stated that claimant was denied benefits from November 17, 2024 to March 8, 2025. However, decision # L0007918513 should have stated that claimant was disqualified from receiving benefits beginning Sunday, November 17, 2024 and until he earned four times his weekly benefit amount. See ORS 657.176.

(4) After becoming intoxicated, the manager “was insisting” that claimant continue to serve him alcohol, which claimant refused to do based on his level of intoxication. Audio Record at 23:05. Claimant believed that while he was distracted with other responsibilities, the manager went behind the bar and served himself additional alcoholic drinks. Claimant attempted to eject the manager after the manager “made a disgusting gesture at [claimant] and continued to argue with [him]” about not going behind the bar and serving himself drinks. Audio Record at 18:00. The manager eventually left the bar at claimant’s request.

(5) On November 23, 2024, prior to claimant’s scheduled shift, claimant met with the employer’s owners to report the manager’s conduct over the preceding two weeks. Claimant discussed the matter with them for approximately 30 minutes, but they indicated to claimant “that they weren’t really gonna do anything about it.” Audio Record at 23:33. Claimant believed that the manager would discharge claimant in retaliation for his actions the previous night or for making a complaint, or would continue to violate OLCC rules and insist that claimant unlawfully serve him alcohol.<sup>2</sup>

(6) Based on claimant’s belief that the manager would discharge him or continue his behavior, claimant informed the employer at the conclusion of the meeting that he was resigning with immediate effect. Claimant did not work his scheduled shift that day or thereafter.

**CONCLUSIONS AND REASONS:** Claimant quit work with 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.

OAR 845-006-0345 (effective January 2, 2024 through March 30, 2025) provided, in relevant part:

. . . No employee or agent of a licensee may violate any provision of this rule. \* \* \*

(1) Definitions. For this rule:

(a) “On-duty” means from the beginning of a work shift that involves the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises, to the end of the shift including any breaks.

(b) “On-duty” also means, for those working outside a scheduled work shift, having the authority to put himself or herself on-duty and performing acts on behalf of the licensee

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<sup>2</sup> ORS 471.410(1) provides, “A person may not sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.” ORS 471.412(1) provides, “A licensee or permittee may not allow a person to consume or to continue to consume alcoholic beverages on the licensed premises after observing that the person is visibly intoxicated.”

which involve the mixing, sale or service of alcoholic beverages, checking identification or controlling conduct on the premises. Whether a person is paid or scheduled for work is not determinative of whether the person is considered “on-duty” under this subsection.

(c) “A work shift that involves the sale and service of alcoholic beverages” includes supervising those who mix, sell or serve, check identification or control the premises.

(2) Under the Influence of an Intoxicating Substance On-Duty.

(a) No licensee, permittee, or agent of a licensee will be under the influence of an intoxicating substance while on-duty.

(b) A violation of this section is a Category II violation.

(3) Consuming an Intoxicating Substance On-Duty.

(a) No licensee, permittee, or agent of a licensee will consume any intoxicating substance while on-duty. \* \* \*

(b) A violation of this section is a Category III violation.

\* \* \*

(14) Self-Service. No licensee, permittee, or agent of a licensee will permit any patron to mix, dispense or serve an alcoholic beverage for or to himself or herself or to another patron for on-premises consumption. Despite this requirement, a patron may mix or serve alcoholic beverages for or to himself or herself or for or to another patron, and the patron is not required to have a Commission-issued service permit or temporary service permit, provided:

(a) An on-duty licensee, permittee, or agent of the licensee served or provided the alcoholic beverages to the patron;

(b) The alcoholic beverages are served or provided to the patron in an open container that is not an open bottle of distilled spirits or a securely covered container of malt beverages, wine, or cider;

(c) The alcoholic beverages are only for on-premises consumption; and

(d) The licensee, permittee, and agent of the licensee follow all other regulations pursuant to the sale and service of alcoholic beverages.

(e) A violation of (a) – (c) of this section is a Category III violation.

\* \* \*

Claimant quit working for the employer on November 23, 2024, based on his manager's conduct over the preceding two weeks, and particularly during the previous evening. The order under review concluded that claimant did not face a grave situation as a result of the manager's conduct because only the manager, and not claimant, would be held responsible by OLCC for the manager's rule violations. Order No. 25-UI-282926 at 3. The record does not support the conclusion that claimant did not face a grave situation.

On November 22, 2024, claimant's manager, who had the authority to put himself on duty and perform acts on behalf of the employer, engaged in supervisory duties and served alcoholic drinks. He therefore was "on-duty" under the provisions of OAR 845-006-0345(1)(b) despite purporting to have concluded his shift early. The manager thereafter served himself alcohol, which he consumed to the point of being under its influence, in violation of OAR 845-006-0345(2)(a), (3)(a), and (14), at a time when claimant, as bartender, was responsible for ensuring the bar's compliance with the rule. Eventually, the manager became intoxicated and "insist[ed]" that claimant serve him additional alcoholic drinks, which would have been illegal for claimant to do under ORS 471.410(1) and 471.412(1). Audio Record at 23:05. Claimant testified that after he refused to serve the manager alcohol due to his intoxication, claimant ejected him from the bar. Audio Record at 23:10.

Claimant reported the manager's behavior to the employer's owners the following day, including that the manager had consumed alcohol while performing work duties on several occasions over the preceding two weeks that they had worked together. Claimant had brought the issue up with the manager directly prior to November 22, 2024. Claimant testified that the owners responded, "that they weren't really gonna do anything about it." Audio Record at 23:33. Claimant therefore believed that the manager would repeat his conduct, or that the manager would endeavor to discharge claimant for having ejected him from the bar and reported his conduct to the owners.

As the manager's disregard for OLCC rules on November 22, 2024, was not isolated and was part of a pattern of similar conduct over a two-week period, claimant reasonably believed that on future occasions he would be urged to unlawfully serve the manager alcohol or expected to overlook or abet his OLCC rule violations. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work under these circumstances if there was no reasonable alternative, and claimant therefore faced a grave situation.

Furthermore, claimant attempted to address the issue with the employer's owners and the manager himself, but neither of them demonstrated concern about the manager's conduct. It can reasonably be inferred that additional attempts to speak with them about the manager's conduct would not be fruitful. Accordingly, claimant had no reasonable alternative but to quit work, and did so with good cause.

For these reasons, claimant quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 25-UI-282926 is set aside, as outlined above.

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

**DATE of Service: April 1, 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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# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**

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