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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0146

Modified
No Disqualification

PROCEDURAL HISTORY: On October 1, 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 effective September 1, 2024 (decision # L0006386000).[1] Claimant filed a timely request for hearing.

On November 13, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # L0006386000, scheduled for November 27, 2024. On November 27, 2024, claimant failed to appear for the hearing, and ALJ Chiller issued Order No. 24-UI-275081, dismissing the hearing request on decision # L0006386000 due to claimant's failure to appear. Claimant filed a request to reopen, which OAH treated as timely-filed. On February 11, 2025, ALJ Chiller conducted a hearing at which the employer failed to appear, and on February 21, 2025, issued Order No. 25-UI-283849, allowing claimant's reopen request, canceling Order No. 24-UI-275081, and affirming decision # L0006386000. On February 21, 2025, claimant filed an application for review 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-283849 allowing claimant's reopen request. That part of Order No. 25-UI-275081 is **adopted.** *See* ORS 657.275(2).

FINDINGS OF FACT: (1) MTR Western LLC employed claimant as a bus driver from November 2018 until September 4, 2024.

(2) The employer offered bus transportation services with destinations throughout North America. Claimant initially drove a route for the employer that went from Portland, Oregon to a destination in Canada.

[1] Decision # L0006386000 stated that claimant was denied benefits from September 1, 2024, to August 30, 2025. However, decision # L0006386000 should have stated that claimant was disqualified from receiving benefits beginning Sunday, September 1, 2024, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) The employer also operated a route that went from Portland to a destination in California. This route was dangerous for bus drivers because some of the passengers engaged in illegal activities or tended to suffer from mental health difficulties or be under the influence of drugs. Originally, the employer assigned a single driver to the California route. However, in early 2024, police pulled a bus on that route over, and following a search, seized illegal drugs and firearms from passengers on the bus. The incident caused the driver who operated the California route to resign, and the employer determined that "they needed two drivers to make the route safer." Transcript at 36. The employer then assigned two co-drivers to operate the route, with the intent that the drivers support one another and improve safety during the route.

(4) Following the transition to using co-drivers on the California route, claimant transferred from the Canada route to the California route. Upon leaving the Canada route, the Canada route was filled by another driver and claimant could not return to it. Claimant worked the California route, with co-drivers, for several months without incident.

(5) In or around May 2024, the employer assigned a new co-driver to work the California route with claimant. Claimant considered the co-driver to be unsafe to drive with. On May 8, 2024, claimant was riding the return portion of the California route from Sacramento, California as a passenger after having been in Sacramento for an extended period due to being ill with COVID-19. Transcript at 31. Claimant had confirmed with the employer that no passengers had purchased the front seats next to hers, which cost extra, and claimant intended to keep the seats empty to minimize potential exposure of passengers to COVID-19. Two passengers were insistent on sitting in the seats, and when claimant tried to seat them elsewhere, the passengers threatened claimant and directed foul language at her. Claimant attempted to require the passengers to leave the bus, and contacted the bus station's security, who arrived at the bus's entrance, but the passengers refused to leave. The co-driver then seated the passengers in the seats they wanted and told them not to worry about it. The passengers sat near claimant thereafter, with one of them directing insults toward claimant for the remainder of the route, such as calling her "a bitch." Transcript at 33. Claimant believed that the co-driver's overriding of her decision to refuse the passengers transportation placed her in an unsafe position and caused her to be subjected to abuse.

(6) The beginning portion of the California route was on a schedule with limited time and the employer did not permit passengers to take smoke breaks. On June 12, 2024, during a stop between Portland and Eugene, Oregon, a passenger complained about not being allowed a smoke break. Claimant attempted to explain to the passenger that the employer did not allow breaks because time did not permit them. The passenger responded by behaving erratically, in a manner claimant believed indicated that the passenger was mentally ill. This included the passenger covering his face with a piece of paper and stating, "The devil is listening. The devil is listening." Transcript at 17. Claimant cautioned the passenger that insisting on taking a break and continuing to behave erratically could cause him to be refused transportation. Claimant then proceeded to the Eugene stop, where she picked up the co-driver and more passengers. As claimant was loading these new passengers, the passenger who had behaved erratically got off the bus and took a smoke break.

(7) Claimant approached the passenger and advised that he was being refused transportation and that he needed to gather his belongings. The passenger, a tall man, got "in [claimant's] face" and "backed [her]

up" into the bus onto the top of the stairs. Transcript at 18. The passenger yelled in claimant's face, "Call the cops, I dare you." Transcript at 19. Claimant's co-driver sat nearby behind the driver's seat, and did not offer claimant any help. Claimant turned to the co-driver and asked, "are you going to back me up here?" Transcript at 19. The co-driver got up from his seat, and walked past claimant and the passenger. The passenger then forced his way back onto the bus. Claimant believed that the co-driver's failure to help her with the erratic passenger placed her in an unsafe position.

(8) The return portion of the California route started at night. Claimant was required to check out from her hotel and wait on the sidewalk at a specific time at night when the co-driver would pick her up. Because the schedule was tight, the employer required claimant to be present with her luggage on the sidewalk to be ready to "just get on the bus and roll[.]" Transcript at 25. On August 14, 2024, claimant waited on the sidewalk at the scheduled time, but the co-driver did not arrive. On that night, without notice to claimant or the employer, the co-driver picked up the first two stops of the route, which caused him to be late picking up claimant. The co-driver eventually picked up claimant, after she had waited on the sidewalk for an hour.

(9) On another occasion in August 2024, the co-driver again failed to arrive on time to pick up claimant from the sidewalk because he opted to first pick up the initial two stops of the route. This time, the co-driver texted claimant advising he would be at the sidewalk in a few minutes and would text claimant when he arrived. Rather than stay outside on the sidewalk as she did before, claimant returned to the hotel lobby to wait. The co-driver eventually arrived, but did not text claimant as he had promised. Claimant saw the bus, and, from the hotel lobby, "hightailed it" onto the bus. Transcript at 27. However, during the time claimant moved hurriedly from the lobby to the bus, the co-driver had called the employer and advised that claimant was not where she was supposed to be on the sidewalk. The co-driver's call caused the employer to text claimant asking where she was. The employer did not discipline claimant for not being on the sidewalk, but claimant felt the co-driver's actions were petty and showed that he was unreliable.

(10) On another occasion, claimant observed the co-driver nearly hit a pedestrian. Claimant had also heard from colleagues that the co-driver would sometimes fall asleep at the wheel or play video games while driving.

(11) Claimant concluded that the co-driver's lack of support, unreliability, and recklessness posed a threat to her safety on the dangerous California route. Claimant had to work with the co-driver two to four times a week. Claimant asked the employer to assign her a different co-driver, but the employer told claimant it "wasn't going to happen." Transcript at 34. Claimant spoke to her manager and the co-driver's manager several times about the co-driver. When she did so, claimant's manager stated that he would ask the co-driver's manager to speak to the co-driver. When claimant raised the matter with the co-driver's manager, he stated that he had not received any complaints about the co-driver, and took no action to discipline him. Claimant could not transfer to a different route or return to the Canada route. Claimant felt it was unsafe to continue working for the employer and that no one was listening to her.

(12) On August 29, 2024, the employer held a quarterly meeting on a teleconferencing platform, which employees were invited to attend. Claimant joined the meeting, informed the employer that she did not feel safe with the co-driver, and verbally notified the employer that she intended to resign effective September 12, 2024.(13) Thereafter, following a couple of days of working, claimant noticed that the

employer had removed her from four shifts during the two-week schedule corresponding to her notice period. The employer advised that the days claimant was removed from the schedule were days she would otherwise have had to work with the co-driver. Claimant remained scheduled to work other days during the two weeks, when a different co-driver was assigned to the California route. Claimant offered to work with a different co-driver or a different route to make up for the days removed from the schedule. The employer then attempted to schedule claimant for a route on the weekend of September 7 and 8, 2024, which claimant advised she could not work because of a conflict. Claimant did not receive an immediate response when she told the employer she could not work that weekend. When claimant contacted the employer again, on September 4, 2024, the employer told her that they "didn't need [claimant] anymore." Transcript at 15. On that date, the employer told claimant that she "was removed from the schedule completely because [she] wouldn't work with the problematic co-driver[.]" Exhibit 4 at 6.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

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 order under review concluded that claimant voluntarily left work during the notice period on September 4, 2024, reasoning that claimant quit on that day because continuing work was available working with the co-driver but she refused the work. Order No. 25-UI-283849 at 5-6. The order went on to conclude that this purported September 4, 2024, voluntary leaving was without good cause. Order No. 25-UI-283849 at 6-7. The record does support that the work separation on September 4, 2024, was a voluntary leaving. Rather, the employer discharged claimant on September 4, 2024, which was a discharge within 15 days of claimant's planned quit on September 12, 2024, for reasons that constitute good cause.

The record shows that the employer discharged claimant on September 4, 2024, a few days after claimant had given notice that she planned to quit working for the employer effective September 12, 2024. During her two-week notice period, claimant worked a couple of days, then noticed that the employer had removed her from four shifts during the two weeks. The employer did so because those were days claimant would otherwise have had to work with the co-driver. Claimant remained scheduled to work other days during the two weeks, when a different co-driver was assigned to the California route. Claimant offered to work with a different co-driver or on a different route to make up for the days removed, and the employer then attempted to schedule her for a route that she could not work because of a conflict. Thereafter, on September 4, 2024, the employer advised that they "didn't need [claimant] anymore." Transcript at 15. The employer told claimant that she "was removed from the schedule completely because [she] wouldn't work with the problematic co-driver[.]" Exhibit 4 at 6.

Thus, the record shows that claimant was willing to continue working for the employer through the completion of her notice period with the only constraints being that she would not work the routes she shared with the co-driver, or the route she could not work because of a conflict. On September 4, 2024, however, the employer informed claimant that they did not need her any longer and that she was being

removed from the schedule completely. Because claimant was willing to continue working for the employer until September 12, 2024, but was not allowed to do so by the employer, the work separation was a discharge that occurred on September 4, 2024.

Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "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). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant on September 4, 2024, after informing her that they did not need her any longer and that she was being "removed from the schedule completely because [she] wouldn't work with the problematic co-driver[.]" Exhibit 4 at 6. The record shows that claimant planned to quit on September 12, 2024, and the fact that the employer told claimant they "didn't need [her] anymore" is consistent with the employer having ended the employment relationship simply because claimant's last day of employment was imminent, rather than due to conduct that was a willful or wantonly negligent violation of the employer's standards of behavior. Transcript at 15.

The fact that the employer advised that they were removing claimant from the schedule altogether because she was unwilling to work with the co-driver likewise fails to show that the employer discharged claimant for misconduct. The employer had accommodated claimant's preference to not work with the co-driver during the notice period by removing her from those work days, which suggests that claimant's insistence that she not work with the co-driver did not breach the employer's expectations. Claimant's loss of those work days caused her to offer to work with other co-drivers or on other routes during the notice period to make up for the days removed. When claimant advised she could not work the weekend route due to a conflict, the employer's next act was to remove claimant from the schedule completely, thereby ending the employment relationship. This sequence of events suggests that the employer discharged claimant because her employment was soon to end, and spending time on the schedule during the notice period was not worth the effort to the employer. In any event, the employer, who did not appear at hearing, did not establish that claimant's conduct during the notice period amounted to a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her or a disregard of the employer's interests. The record does not show that claimant violated any employer expectation during the notice period. Claimant's September 4, 2024, discharge therefore was not for misconduct under ORS 657.176(2)(a).

ORS 657.176(8). While the record shows that claimant was discharged, but not for misconduct, it is necessary to determine whether ORS 657.176(8) applies to this case. ORS 657.176(8) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for

misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date."

Here, claimant notified the employer that she would quit work on September 12, 2024. The employer discharged claimant, but not for misconduct, on September 4, 2024, which was within 15 days of claimant's September 12, 2024, planned quit. Therefore, the applicability of ORS 657.176(8) turns on whether claimant's planned quit on September 12, 2024, was without good cause.

"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.

Claimant's planned quit on September 12, 2024, was for reasons that constituted good cause. Continuing to work with the co-driver presented claimant with a grave situation. The California route was dangerous for drivers, and the employer had specifically adopted the co-driver strategy with the intent that the drivers would support one another and improve safety on the route. Claimant was required to work the route with the co-driver two to four times per week, and the co-driver had proven to be unreliable, reckless, and unwilling to support claimant during situations that were potentially unsafe.

For example, during the May 8, 2024, incident, the co-driver undermined claimant's decision to refuse the threatening passengers transportation, and sat them next to claimant. This resulted in claimant being subjected to insults and abuse, such as being called a "bitch," throughout the remainder of the route. Transcript at 33. During the June 12, 2024, incident, the co-driver refused to help claimant when an erratic passenger threatened physical harm by getting "in [claimant's] face" and "back[ing] [her] up" into the bus. Transcript at 18. The co-driver's inaction allowed the passenger to force his way back onto the bus, which both posed a continuing safety threat to claimant and undermined her authority as a driver. The August 2024 incidents, when the co-driver, on the first occasion, made claimant wait on a sidewalk at night for an hour to be picked up, and then, on the second occasion, complained to the employer that claimant was not waiting on the sidewalk where she was supposed to be, demonstrated that the co-driver was not reliable. Claimant also observed the co-driver nearly strike a pedestrian on one occasion, and claimant had heard from colleagues that the co-driver would sometimes fall asleep at the wheel or play video games while driving. Considering this evidence in combination, the record is sufficient to conclude that operating the California route with the co-driver, as claimant was required to do multiple times a week, was unsafe. Claimant therefore faced a grave situation.

Reasonable alternatives to quitting were not available to claimant. Claimant had asked the employer to assign a different co-driver to the route, but the employer's refused to do so. Claimant spoke to her manager and the co-driver's manager several times about the co-driver. When she did so, claimant's manager stated that he would ask the co-driver's manager to speak to the co-driver. When claimant

herself raised the matter with the co-driver's manager, he took no action to discipline the co-driver. The employer's responses here indicate that any additional attempts to get the employer to intervene would most likely have been futile, and therefore would not have been a reasonable alternative to quitting. Claimant also could not transfer to a different bus route or return to the Canada route. Claimant therefore established that her planned quit on September 12, 2024, was with good cause because the planned quit was based on a reason of such gravity that she had no reasonable alternative but to leave work.

Thus, because the employer discharged claimant, but not for misconduct, within 15 days prior to the date claimant planned to voluntarily leave work with good cause, ORS 657.176(8) does not apply to this case. Instead, this case is governed by ORS 657.176(2)(a) and, as discussed above, the record does not show that claimant's discharge was for misconduct under that provision. As such, claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-283849 is modified, as outlined above.

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

DATE of Service: April 9, 2025

NOTE: This decision modifies 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
Email: *appealsboard@employ.oregon.gov*
Website: *www.Oregon.gov/employ/pages/employment-appeals-board.aspx*