

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0154

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 19, 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 June 16, 2024 (decision # L0007836872).¹ Claimant filed a timely request for hearing. On February 12, 2025, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on February 20, 2025, issued Order No. 25-UI-283597, affirming decision # L0007836872. On March 10, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

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 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) Morello Construction, LLC employed claimant as an operating engineer in their construction business from May 2023 through June 17, 2024. Claimant was a member of a union working under a collective bargaining agreement.

(2) On June 14, 2024, claimant was working on a construction site in a closed park. Claimant was operating a piece of equipment when another employee drove a vehicle "extremely fast" between the equipment claimant was operating and another piece of equipment, which claimant believed was unsafe and a "near miss incident." Audio Record at 10:35, 11:48.

¹ Decision # L0007836872 stated that claimant was denied benefits from June 16, 2024 to November 15, 2025. However, decision # L0007836872 should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 16, 2024 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(3) The driver was “like a foreman” to claimant and, claimant believed, “didn’t understand the severity of the situation.” Transcript at 11:48, 15:00. For these reasons, claimant did not discuss the incident with the driver.

(4) On June 17, 2024, claimant notified the employer that he was quitting work immediately. Claimant did not work for the employer thereafter. Claimant promptly notified his union that he quit and was added to their referral list for other work. Claimant resigned due to the “near miss incident” and because he “saw a lot of things like that happening. . . [and] didn’t feel safe there.” Audio Record at 10:55.

(5) Claimant did not notify the employer’s owner of his safety concerns, including the “near miss incident,” or request a transfer to another of the employer’s projects, because the driver involved was “somewhat related” to the owner, and because claimant believed it would be “more efficient just to quit and get on the [union] referral list” for potential work with other employers. Audio Record at 16:30.

CONCLUSIONS AND REASONS: Claimant 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.

ORS 657.176(11) provides:

An individual may not be disqualified from receiving benefits under subsection (2)(c) of this section and shall be deemed laid off if the individual:

- (a) Works under a collective bargaining agreement;
- (b) Elects to be laid off when the employer has decided to lay off employees; and
- (c) Is placed on the referral list under the collective bargaining agreement.

Claimant quit working for the employer due to a “near miss incident” involving another employee driving a vehicle through a construction site in what claimant believed was an unsafe manner. Claimant testified that he “saw a lot of things like this happening,” which contributed to him feeling unsafe, but did not elaborate on these “things” at hearing or assert that any other specific incident led him to quit work when he did. Audio Record at 10:55. Therefore, the “near miss incident” is the proper subject of the good cause analysis.

Claimant testified regarding the incident, “I experienced someone just driving extremely fast by me while I was actually operating a piece of equipment, and the person didn’t understand the severity of the

situation.” Audio Record at 11:48. Claimant explained that the vehicle passed “in between two pieces of heavy equipment without notifying us or without us seeing this individual.” Audio Record at 12:07. Claimant did not assert that any injury or property damage resulted from the incident. The record does not show evidence of other specific incidents in which claimant was exposed to danger through the negligence of another employee. While claimant understandably felt unsafe when the incident occurred, the information in the record concerning the overall safety of the workplace, including this isolated incident, did not objectively demonstrate that claimant faced a grave situation at the time he quit. However, even if the incident had constituted a grave situation, claimant had reasonable alternatives to quitting.

The record shows that claimant had the reasonable alternatives to leaving work of discussing his safety concerns with the employee who drove the vehicle and the employer’s owner. Claimant did not alert the employee driving the vehicle that he believed his actions were dangerous because the employee was “like a foreman” to him. Audio Record at 15:05. This status alone does not show that addressing the issue directly with the employee likely would have been futile in preventing similar incidents in the future. Further, claimant did not report the incident to the employer’s owner, in part because the employee was “somewhat related” to the owner. Audio Record at 16:30. Similarly, this relationship alone does not show that addressing the issue with the owner would not have led to improvements in workplace safety. Accordingly, claimant had reasonable alternatives to leaving work, and therefore quit without good cause.

Claimant asserted at hearing that, notwithstanding a lack of good cause to quit work under ORS 657.176(2)(c), he should not be disqualified from receiving benefits based on the work separation under the provisions of ORS 657.176(11). Audio Record at 20:20. The record shows that claimant met two of the three requirements for subsection (11) to apply: he worked under a collective bargaining agreement and, after quitting work, was placed on the referral list under the collective bargaining agreement. *See* ORS 657.176(11)(a) and (c). However, claimant did not assert, and the record does not otherwise suggest, that the employer had decided to lay off employees and that claimant’s employment ended because he elected to be one of the employees laid off. *See* ORS 657.176(11)(b). As all three criteria must be met for subsection (11) to apply, it does not prevent claimant’s disqualification from benefits for quitting work without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving benefits effective June 16, 2024.

DECISION: Order No. 25-UI-283597 is affirmed.

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

DATE of Service: April 9, 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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