EO: Intrastate
BYE: 01-Nov-2025

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

573
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0157

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 5, 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 October 27, 2024 (decision # L0007579992). Claimant filed a timely request for hearing. On February 13, 2025, ALJ Honea conducted a hearing at which the employer failed to appear, and on February 19, 2025, issued Order No. 25-UI-283384, affirming decision # L0007579992. On March 11, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At hearing, the ALJ excluded from the record Exhibit 1, a written narrative describing the events surrounding claimant's separation from work. Transcript at 31. The order under review explained that the exhibit was excluded because "it was testimonial and duplicative." Order No. 25-UI-283384 at 1. However, the decision to exclude the exhibit was error. OAR 471-040-0025(5) (August 1, 2004) states, in relevant part, that "irrelevant, immaterial, or unduly repetitious evidence shall be excluded" from the hearing record. The rule contains no provision suggesting that evidence should be excluded from the record on the basis that it is testimonial in nature. As to the contents of Exhibit 1, the narrative in the exhibit is both relevant and material to the outcome in this matter. Further, while much of the contents of that narrative was offered in testimony, there is information in it which was not offered in testimony. Therefore, the narrative is not unduly repetitious of the hearing testimony.

For the above reasons, the ALJ lacked a proper basis for excluding Exhibit 1 from the hearing record. Exhibit 1 is therefore admitted into the hearing record.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) Stephens Heating & Cooling, Inc. employed claimant as a service technician for their heating, ventilation, and air conditioning (HVAC) business from June 1, 2022, through October 30, 2024.

(2) The employer issued claimant a company-owned van that claimant used to make service calls to the employer's customers. Claimant was able to keep all of his work tools and a ladder in the van. The employer also issued claimant a credit card to pay for gas. Claimant was responsible for regular upkeep of the vehicle, such as oil changes and safety checks, which he did.

(3) On July 24, 2024, claimant was driving the van, which had about 260,000 miles on its odometer, home from work when it "stopped working." Exhibit 1 at 3. Before the van was towed away, claimant checked the vehicle's fluids and confirmed that they were at appropriate levels. The van's breakdown was later determined to be the result of an irreparable problem with the engine.

(4) After the van broke down, the employer temporarily allowed claimant to use their other van. However, on August 6, 2024, the owner "accused [claimant] of blowing up two of his vans," and told claimant that he was required to return the other van to the employer, and that he would have to either drive his own vehicle for work or else be discharged. Exhibit 1 at 3.

(5) On August 7, 2024, based on what the owner had told him the previous day, claimant began using his wife's spare pickup truck for work, as claimant owned no vehicles of his own, and his wife needed her primary vehicle for her own purposes. However, the truck was nearly 20 years old, in poor repair, and had little tread left on its tires, and claimant and his wife could not afford to make the repairs necessary to make it a safe vehicle for regular work use. Additionally, the truck had neither a canopy to cover and secure claimant's work tools in the truck bed, nor a rack to hold a ladder. The employer continued to allow claimant to use the company credit card to pay for gas for the truck, but did not reimburse him for mileage. Claimant was concerned about these various issues with using the truck for work, but decided to use it because he wished to continue working for the employer.

(6) When claimant started using his wife's truck for work, the owner told claimant that the company's insurance policy would cover any accidents in the truck. However, on August 26, 2024, claimant's wife called her own insurance company, who told her that this was incorrect. The insurance company also told claimant's wife that the truck would require a commercial policy for claimant to continue driving it as a work vehicle, which would result in a higher premium, and that if claimant continued to drive the vehicle for work without a commercial policy it would be considered insurance fraud. The same day, claimant contacted the owner to convey these concerns to him, and requested that they meet to address the situation. However, the owner did not meet with claimant until September 9, 2024. Claimant continued driving his wife's truck for work until that date.

(7) On September 9, 2024, claimant and the owner met, and the owner agreed to let claimant use a company-owned Toyota Prius for work. Claimant began doing so the following day, although the Prius was not particularly suitable for his work, as it could not fit all of his tools or a ladder. Nevertheless, as claimant wished to continue working for the employer, he continued driving the Prius for work until late October 2024.

(8) On October 28, 2024, claimant took the Prius to a tire store to have the two front tires replaced, as they had become so worn that one of them would no longer hold air. For that and the following day, while the Prius was in the shop, claimant drove his wife's pickup truck for work, believing that he could continue using the Prius for work once it was out of the shop.

(9) On October 29, 2024, the employer's service manager called claimant and asked him where the Prius was. Claimant explained that it was in the shop getting its tires replaced and would be ready to drive the following day. The service manager then told claimant that, at the owner's direction, claimant would need to return the Prius to the employer's premises the next day so that two new employees could use it. Claimant agreed to do so. However, this left claimant without a vehicle to use for work, other than his wife's pickup truck. As the owner was aware of this, and did not offer claimant a replacement vehicle to use for work, claimant believed the owner's decision to require claimant to return the Prius meant that he had decided to discharge claimant. Claimant contacted the owner by text and email to ask if he had been discharged, but the owner never responded to claimant.

(10) On October 30, 2024, claimant returned the Prius to the employer's premises. Claimant also returned his company credit card and various pieces of the employer's equipment that were in his possession. Claimant's final check was not ready for him that day, and the owner never told claimant that he was discharged. Claimant did not work for the employer again.

CONCLUSIONS AND REASONS: Claimant quit work with good cause.

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). "Work" means the continuing relationship between an employer and an employee. OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

Claimant separated from work on October 30, 2024, after turning in the employer's Prius and being left without another company vehicle to drive for work. Claimant believed that the employer, in leaving claimant without a work vehicle, essentially discharged him. The employer did not appear for the hearing or offer any evidence regarding their position on the separation, and did not provide claimant with any such information at the time the separation took place. However, claimant was not told that he was discharged, a final check was not left for claimant when he turned in the Prius, and the record suggests that claimant turned in his work equipment without being prompted by the employer. The shows that in doing so, it was claimant who severed the employment relationship, and not the employer. The work separation therefore was a quit that occurred on October 30, 2024.

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.

Claimant quit work after the employer required claimant to return the work vehicle he had been using and did not supply claimant with another vehicle. This left claimant with only two options: either drive his wife's pickup truck for work, or stop working for the employer. The order under review concluded that this was not good cause for quitting, reasoning that claimant's situation was not grave because claimant could have "continued working for the employer and sought other positions that did not require use of a vehicle," purchased a commercial insurance policy for his wife's truck or asked the owner to do so, or spoken to the owner prior to quitting "to discuss whether or not he would be receiving a company vehicle, as he had in the past, or if any other options existed." Order No. 25-UI-283384 at 4. The record does not support this conclusion.

First, as claimant required a vehicle to perform his work and no longer had a suitable vehicle, his situation was grave. Despite the fact that claimant had been using his wife's truck for work, the record shows that the truck was ill-suited for that purpose, as it was in poor repair and not properly equipped for the work claimant was performing, and claimant could not afford to repair and outfit it appropriately. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work if there was no reasonable alternative to driving such a vehicle.

As noted above, repairing or outfitting his wife's vehicle so that it was suited for his work was not financially possible for claimant, and therefore was not a reasonable alternative. Additionally, even aside from those concerns, purchasing a commercial insurance policy for the vehicle himself, at his own expense, was not reasonable, and the owner's previous lack of concern regarding the insurance issue suggests that raising the matter with him again would most likely have been futile. Likewise, attempting to talk to the owner again about being offered another company vehicle, or to discuss "any other options" would most likely have been futile. Claimant attempted, before he quit, to contact the owner, but the owner did not respond to him. This, coupled with the owner's decision to require claimant to return the Prius, his prior statement accusing claimant of "blowing up" the employer's vans,[1] and requiring claimant to drive his own vehicle for work, suggests that the owner would not have responded to any further attempts that claimant might have made to contact him about the matter. Thus, attempting to speak to the owner again was no a reasonable alternative to quitting.

Finally, as to the suggestion that claimant could have sought "other positions that did not require use of a vehicle," the record lacks evidence to suggest that any other such positions were available, that such positions would have been suitable for claimant's work experience and abilities, or that the employer would have considered moving claimant into another role, even if it was available. *See Fisher v. Employment Department*, 911 P2d 975, 139 Or App 320 (Or. App. 1996) (for a course of action to be considered a reasonable alternative to quitting, the record must show that such course of action was actually available to the individual). Because such evidence is absent from the record, pursuing it would not have been a reasonable alternative to quitting. Therefore, claimant had no reasonable alternative but to quit.

[1] Despite this accusation, the record suggests that the poor condition of the employer's vehicles was not the result of claimant's negligence, but rather that the employer failed to properly maintain them.

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

DECISION: Order No. 25-UI-283384 is set aside, as outlined above.

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

DATE of Service: April 11, 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.

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.

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