

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0172-R**

*EAB Decision 2025-EAB-0172 Reversed on Reconsideration*  
*Late Application for Review Allowed*  
*Order No. 25-UI-280249 Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 4, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation (decision # L0007053908). The employer filed a timely request for hearing. On January 9, 2025, ALJ Enyinnaya conducted a hearing, and on January 17, 2025, issued Order No. 25-UI-280249, reversing decision # L0007053908 by concluding claimant quit without good cause and was disqualified from receiving benefits effective September 1, 2024. On February 6, 2025, Order No. 25-UI-280249 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On March 18, 2025, claimant filed a late application for review of Order No. 25-UI-280249 with EAB. On April 17, 2025, EAB issued EAB Decision 2025-EAB-0172, dismissing claimant's late application for review. On its own motion, EAB has reconsidered EAB Decision 2025-EAB-0172. 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). The additional evidence consists of claimant's April 20, 2025, email to EAB, attachments to that email, and an excerpt from administrative decision # L0008808519 which was issued on January 22, 2025. This evidence has been marked as EAB Exhibit 2, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send 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 exhibit will remain in the record.

**FINDINGS OF FACT:** (1) Amphitheater Music Production, LLC employed claimant as a stagehand from May 28, 2024 through September 4, 2024. Claimant's work as a stagehand required significant physical exertion.

(2) The employer operated a concert venue and employed their event staff, including claimant, on a seasonal basis for the summer months. For 2024, the season was scheduled to end on September 28, 2024. The employer allowed their seasonal staff to freely choose which available shifts to work.

(3) The employer had in place a policy which allowed employees who became pregnant to transfer, at the same rate of pay, into positions which did not require physical exertion. This policy was memorialized in the employer's handbook.

(4) On September 4, 2024, claimant notified her manager that she was resigning with immediate effect because she was pregnant and no longer wished to perform the physically demanding work required of a stagehand. Prior to resigning, claimant did not request a transfer to a different position without physical demands. Claimant did not do so because claimant was not aware that such an option existed, as claimant never asked and her manager did not inform her of such an option, and because the season was already drawing to a close.

(5) Had claimant not resigned on September 4, 2024, the employer would have permitted her to continue working any available shifts she wished to work until the end of the season on September 28, 2024. Had claimant requested to transfer to a position which did not require physical exertion, the employer would have honored her request.

(6) Order No. 25-UI-280249, mailed to claimant on January 17, 2025, 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-280249 at 3. Order No. 25-UI-280249 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 6, 2025, to be timely."

(7) On January 22, 2025, the Department issued decision # L0008808519, which amended decision # L0007053908 by concluding that claimant had voluntarily quit work without good cause and was disqualified from receiving benefits from September 22, 2024, through September 20, 2025. Exhibit 2 at 7. Decision # L0008808519 stated, in relevant part, "We made this decision on January 22, 2025, and it becomes final unless we receive a request for a hearing by February 11, 2025." EAB Exhibit 2 at 8.

(8) Also on January 22, 2025, claimant contacted the Department via Frances Online and, in relevant part, expressed concerns about the outcome of decision # L0008808519. EAB Exhibit 2 at 5. On January 27, 2025, a Department representative responded to claimant's message and advised her of her appeal rights for that decision and, in a later message that day, stated that they had emailed claimant an appeal form to complete and submit. EAB Exhibit 2 at 4-5.

(9) On February 10, 2025, claimant responded to the Department's previous message, stating, in relevant part, "In case my email didn't go through last week, I'm sending my appeal here as well as it's due 2/11/25." EAB Exhibit 2 at 3. On February 11, 2025, a Department representative responded, stating, in relevant part, that claimant's appeal was "in progress." EAB Exhibit 2 at 3.

(10) On April 17, 2025, EAB issued EAB Decision 2025-EAB-0172, dismissing claimant's late application for review. EAB was unaware at that time that decision # L0008808519 had been issued, but later learned of it.

**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-0172 on its own motion to correct a previous error of fact or law. At the time that EAB Decision 2025-EAB-0172 was issued, EAB was unaware that the Department had provided claimant with conflicting and confusing information regarding her right to appeal Order No. 25-UI-280249, 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-0172 on its own motion. On reconsideration, EAB Decision 2025-EAB-0172 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).

OAR 471-041-0060 (May 13, 2019) states, in relevant part:

(1) An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order.

(2) An application for review may be filed in person, or by mail, fax, or electronic means to EAB, or any office of the Employment Department, including OAH, or any Employment Security Agency in any other state or jurisdiction where the applicant is claiming benefits.

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The application for review of Order No. 25-UI-280249 was due by February 6, 2025. Because claimant did not file her application for review until March 18, 2025, it was late. However, the record shows that an earlier-filed document is also properly construed as an application for review of Order No. 25-UI-280249.

On February 10, 2025, claimant sent a message to the Department via Frances Online in which she stated, in relevant part, “In case my email didn’t go through last week, I’m sending my appeal here as

well as it's due 2/11/25." EAB Exhibit 2 at 3. This message related to decision # L0008808519, which amended decision # L0007053908 and concerned the same matter. Given that OAH had already issued an order which reversed decision # L0007053908, it can be reasonably inferred that the Department issued decision # L0008808519 in error. This is further supported by the fact that decision # L0008808519 stated that claimant could request a hearing on that decision, despite the fact that the matter had already been heard by an ALJ.

Thus, while claimant's February 10, 2025, message to the Department did not specifically request an appeal of Order No. 25-UI-280249, it nevertheless requested an appeal of the same matter addressed in that order. Further, even though decision # L0008808519 is not an ALJ order, it was, at the time that claimant received it, the most recent decision addressing the issue in this matter (claimant's separation from work). Had the Department not erroneously issued decision # L0008808519, it stands to reason that claimant would have understood that filing an application for review of Order No. 25-UI-280249 was the correct next step in pursuing her appeal in this matter. As such, claimant's February 10, 2025 message to the Department was, effectively, an application for review of Order No. 25-UI-280249.<sup>1</sup>

Even though the February 10, 2025 message to the Department was effectively an application for review of Order No. 25-UI-280249, it was still late, as it was filed after the February 6, 2025 deadline. Nevertheless, claimant had good cause for filing that late application for review.

The erroneous issuance of decision # L0008808519 on January 22, 2025, and claimant's subsequent interactions with the Department support the inference that claimant reasonably believed that appealing that decision, rather than the ALJ's order which had been issued five days prior, was the correct course of action to pursue her appeal. Thus, because the Department's erroneous issuance of another administrative decision caused claimant to believe that she should appeal *that* decision instead of the ALJ's order, and included a later appeal deadline than stated in the order under review, claimant failed to file a timely application for review due to circumstances beyond her reasonable control. Further, as claimant filed her late application for review on February 10, 2025, four days after the timely filing deadline, claimant filed her late application for review within a reasonable time. Accordingly, claimant's late application for review is allowed.

**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 parties disputed the nature of the work separation. At hearing, claimant did not state that she quit, instead asserting that the work separation was a "seasonal termination," and that after working her final shift on September 4, 2024, she "did not have any shifts" for the remainder of the season. Audio Record at 10:38, 11:30. Based on this testimony, claimant essentially asserted that she was discharged because

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<sup>1</sup> Claimant also indicated in her April 20, 2025 email to EAB that her "appeal was submitted on Feb. 4, 2025, one week prior to the due date (Feb 11, 2025) via email to" the Department. EAB Exhibit 2 at 1. This email could also potentially have been construed as an application for review. However, claimant did not submit a copy of this email, nor did she explain the contents of this email. Therefore, the record therefore does not show, by a preponderance of the evidence, that claimant filed an application for review on February 4, 2025.

there was no work available. The ALJ later asked claimant whether the employer actually told her that there were no more shifts available, or if claimant merely refused to take them. Audio Record at 14:00. Claimant initially responded by stating that she “either... was not available to pick up shifts, or there weren’t any available to be picked up when [she] was available to get them”; then stated, “so when I was available there weren’t any and when I wasn’t available... wait”; and then clarified that there “weren’t any shifts for [her] to pick up.” Audio Record at 14:07–14:40.

By contrast, the employer’s witness testified that claimant voluntarily quit on September 4, 2024, by notifying claimant’s manager that she no longer wished to perform the physically-demanding work required of a stagehand. Audio Record at 19:00. Despite her earlier testimony to the contrary, claimant did not dispute the employer’s testimony on this point. Further, after the employer’s witness testified that they would have allowed claimant to transfer into a role without physical demands if she had so requested, claimant responded by stating that she did not request such an accommodation because the season was almost over and she had not realized that such an option existed. Audio Record at 20:25, 24:10.

Claimant’s testimony above is internally inconsistent. First, in her responses to the question of whether she had refused to pick up shifts or they were merely unavailable, claimant initially stated that *she* was not available to pick up shifts that were available before reversing herself and stating that there weren’t any shifts for her to pick up. Claimant’s response to the employer’s testimony about the possibility of pregnancy accommodations is also telling. Had claimant not quit because she was pregnant and no longer wished to work a physically-demanding job, it stands to reason that claimant would have rebutted the employer’s testimony that she quit because she was pregnant. Instead, claimant responded by explaining she did not seek accommodations because she was not aware that they were available and the season was almost over, not that the employer had terminated her because there was no work.

Given claimant’s inconsistent testimony and her lack of a rebuttal to the employer’s account, the preponderance of the evidence favors the employer’s account as the more accurate version of events, and the facts have been found accordingly. As such, the record shows that the work separation was a voluntary quit which occurred on September 4, 2024.

**Voluntary Quit.** 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). “[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 voluntarily quit work because she had become pregnant and no longer wished to work in the physically-demanding role of a stagehand. Given the possibility of injury to herself or her unborn child that could potentially result from engaging in physically strenuous activity while pregnant, claimant may have faced a grave situation. However, even if claimant may have faced a grave situation, claimant failed to seek reasonable alternatives to quitting.

In particular, claimant had the reasonable alternative of requesting a transfer into a position without the physical demands of stagehand work, which was available to her. Claimant, however, did not seek any information about the possibility of working another position from her manager because the season was drawing to a close. Neither of these reasons are sufficient to show that seeking a transfer to a different position was not a reasonable alternative to quitting. As to the former, a reasonable and prudent person in claimant's position would have made *some* inquiry into whether there was a possibility of continuing to work without physical exertion, even if the employer did not explicitly inform them of such a possibility. As to the latter, the fact that the season was almost over has no obvious bearing on whether it would have been reasonable to seek a transfer into a different position to continue working as long as possible. Therefore, claimant has not met her burden to show that she quit for a reason of such gravity that she had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective September 1, 2024.<sup>2</sup>

**DECISION:** On reconsideration, EAB Decision 2025-EAB-0172 is reversed, and claimant's late application for review filed February 10, 2025, is allowed. Order No. 25-UI-280249 is affirmed.

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

**DATE of Service:** May 22, 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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<sup>2</sup> Throughout the proceedings in this matter, claimant seemed to express concerns about whether it was proper to adjudicate this work separation, as she had been working full-time for another employer through July 2024, and believed the work separation from that employer to be the proper basis for determining her eligibility for benefits. See, e.g., Audio Record at 13:10; EAB Exhibit 1 at 1. However, eligibility for benefits is not tied to one specific employer or work separation. Instead, the law requires that any potentially disqualifying work separation be adjudicated to determine whether it is disqualifying, unless the individual has earned at least four times their weekly benefit amount after the separation has occurred. See ORS 657.176(2). If claimant believes she earned this threshold amount at any point after she quit working for the employer, she may contact the Department directly to discuss whether she may requalify for benefits.



# 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.

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

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Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

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