

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0186

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 4, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective January 5, 2025, through June 7, 2025 (decision # L0009125350). Claimant filed a timely request for hearing. On March 13, 2025, ALJ Murray conducted a hearing at which the employer failed to appear, and on March 19, 2025, issued Order No. 25-UI-286548, modifying decision # L0009125350 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective December 22, 2024. On March 24, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her 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 them 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) First Student Management, LLC employed claimant as a school bus driver from January 22, 2024, through December 31, 2024.

(2) The employer paid claimant \$22 per hour, and claimant worked approximately 28 hours per week.

(3) In November 2024, claimant received and accepted an offer of work from a local school district. The offered work was to pay \$26 per hour, with a minimum of 25 hours per week, and was expected to continue indefinitely. Also in November 2024, after accepting the offer, claimant completed the prerequisites necessary for her to begin the job, such as a background check and drug screen. The school district initially offered to allow claimant to begin working for them in November 2024. However, claimant wished to continue working for the employer through the end of the calendar year, and

therefore deferred starting work for the school district until January 6, 2025, once classes had resumed following the end of winter break.

(4) On December 20, 2024, claimant worked her final shift for the employer. After that date the winter break began and the employer therefore had no additional work for claimant until classes resumed on January 6, 2025.

(5) On December 23, 2024, claimant gave the employer two weeks' notice of her resignation, intending to resign around the final day of the winter break. The employer responded by telling claimant that her last day would actually be December 31, 2024.

(6) On December 31, 2024, claimant quit working for the employer so that she could begin the new job with the school district.

(7) On January 6, 2025, claimant intended to begin working for the school district, but was unable to do so because the district's schools were closed due to inclement weather. On January 9, 2025, claimant began working for the school district.

CONCLUSIONS AND REASONS: Claimant voluntarily 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).

Claimant gave the employer notice on December 23, 2024, that she intended to resign in two weeks. However, the employer instead told claimant that her final day of employment would be December 31, 2024. Despite this, the work separation remains a voluntary quit because there is no indication in the record that claimant objected to the earlier separation date. *See J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990) (where claimant notified the employer of his intent to resign on a particular date, and the employer established a different separation date, claimant's "agreement" to the new separation date can be inferred if claimant did not voice disagreement with the new date or otherwise insist upon working until the original resignation date). Because claimant apparently voiced no such disagreement, claimant implicitly agreed with the employer's proposed separation date of December 31, 2024, and therefore voluntarily quit work on that date.

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.

A claimant who leaves work to accept an offer of other work “has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.” OAR 471-030-0038(5)(a).

Claimant voluntarily quit working for the employer so that she could accept a job with a local school district. As the order under review correctly acknowledged, the offered work was definite, as it was not contingent upon anything such as a background check or drug screen at the time that claimant quit; was reasonably expected to continue; and paid more than the work that claimant was leaving.¹ Order No. 25-UI-286548 at 4. However, the order under review concluded that claimant quit without good cause because the work did not “begin in the shortest time possible” as the new employer “invited claimant to sign onboarding paperwork and begin employment prior to January 6,” and claimant “did not begin this position until 14 days after she resigned from her position with the employer[.]” Order No. 25-UI-286548. The record does not support this conclusion.

The record shows that the school district offered to allow claimant to begin working for them in November 2024, but that she declined to do so because she wished to finish the remainder of the calendar year with the employer. Instead, she deferred her start with the school district until the first day of classes after the conclusion of winter break. Thus, notwithstanding the slight delay resulting from inclement weather, January 6, 2025 was the day on which claimant expected to begin the new job, and her decision to resign at the time she did was based on that understanding. That the school district would have allowed her to begin working for them at a significantly earlier point in time, long before the date on which claimant quit, is irrelevant for purposes of this analysis.

Furthermore, the order under review is incorrect in stating that claimant did not start the new position until 14 days after she resigned her position from the employer. Irrespective of the date claimant gave her notice to the employer, claimant remained employed with the employer until December 31, 2024. At that time, claimant quit having tacitly accepted the employer’s indicated last day of work, and intended to begin working for the school district less than a week later.

Importantly, OAR 471-030-0038(5)(a) requires that the new work begin not in “the shortest length of time possible,” as the order under review suggested, but in “the shortest length of time *as can be deemed reasonable under the individual circumstances*.” Here, the new work was scheduled to begin on January 6, 2025, and the employer had no work for claimant to perform between December 21, 2024, and that date. Despite this, claimant intended to continue the employment relationship up until the date on which she planned to start the new job, and it was only at the employer’s apparent insistence that she quit earlier. Given the complete lack of work available to claimant during the winter break, this was of no practical consequence, and any reasonable person in claimant’s circumstances would therefore have accepted the employer’s indicated last day of work without protest. As such, claimant continued the employment relationship with the employer until the last date on which it was feasible for her to do so, and expected to begin working for the school district on the first date on which it was feasible to do so. Therefore, at the time that claimant quit, the new position was intended to begin within the shortest length of time reasonable under claimant’s individual circumstances. Claimant therefore had good cause

¹ \$22 per hour x 28 hours per week = \$616 per week; \$26 per hour x 25 hours per week = \$650 per week.

for voluntarily quitting work, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-286548 is set aside, as outlined above.

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

DATE of Service: April 28, 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

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.