EO: Intrastate
BYE: 29-Nov-2025

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

324
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0192

Reversed
Disqualification

PROCEDURAL HISTORY: On December 26, 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 November 3, 2024 (decision # L0007924858).[1] Claimant filed a timely request for hearing. On March 10, 2025, ALJ Honea conducted a hearing, and on March 13, 2025, issued Order No. 25-UI-285884, reversing decision # L0007924858 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On March 25, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's argument in reaching this decision.

FINDINGS OF FACT: (1) Newport Waldport Acquisition Corp. employed claimant in sales and customer service at a lumber yard from March 2019 through November 8, 2024.

(2) Beginning in approximately 2020, claimant felt that he was "constantly joked with and called names" by his coworkers, often in reference to his political views. Transcript at 7. Additionally, "quite a few guys" who worked in the lumber yard called claimant "queer and fairy and gay" based on his

[1] Decision # L0007924858 stated that claimant was denied benefits from November 3, 2024 to November 29, 2025. However, decision # L0007924858 should have stated that claimant was disqualified from receiving benefits beginning Sunday, November 3, 2024 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

affiliation with a local theater, and one of them said to claimant, "[A]ll gay people need to be shipped off to an island [t]o be separated from all of the. . . straight people." Transcript at 11, 13. Claimant did not report the comments from the lumber yard workers regarding his perceived sexual orientation to management.

(3) On three occasions from approximately 2020 through 2022, three different customers who had learned of claimant's political beliefs each told claimant that they "would meet [claimant] outside of the building and shoot [him] at the end of the day." Transcript at 8. Claimant did not report these threats to law enforcement.

(4) In June 2024, claimant was vacationing in Lincoln City, Oregon, and happened to meet the manager of a store that the employer was planning to open in that city. During their conversation, claimant believed that that manager offered him a salaried position as assistant manager at that store when it opened, which claimant wished to accept. Claimant's manager later spoke about the interaction with the Lincoln City manager, who denied offering claimant a job. Claimant's manager believed that the Lincoln City manager had been joking with claimant, and claimant's manager told claimant, "You're not going anywhere," without further explanation. Transcript at 17.

(5) On October 28, 2024, claimant began a period of pre-planned vacation leave that lasted through November 4, 2024. On November 5, 2024, claimant returned to work. That evening, claimant was aware of the preliminary results of the presidential election held that day. Claimant was not scheduled to work again until November 8, 2024.

(6) On November 6, 2024, at 9:16 a.m., claimant texted his store manager. Claimant wrote that he "need[ed] to discuss [his] position with the company," and referenced the incident involving the Lincoln City assistant manager position. Exhibit 2 at 4. Claimant further wrote, "I am now ready for discussions of some sort of valuable compensation. A dollar raise won't do it this time. Even when I was drinking heavily, I work 10 times harder than any other sales person on the floor. Yet, I make the same wages. This situation needs to be rectified. I would like to schedule a time when we can discuss my future with the company. When would be good for you?" Exhibit 2 at 4. The text did not reference his treatment by coworkers or customers, complaints of harassment or name-calling, or any other points of dissatisfaction with his work. A meeting was tentatively scheduled for the following day, but on that day, claimant texted, "We can talk tomorrow," referring to November 8, 2024, when claimant was scheduled to work. Exhibit 2 at 5.

(7) On November 8, 2024, claimant was scheduled to begin work at 8:00 a.m. but did not appear at that time or report that he would be late or absent. At approximately 11:00 a.m., claimant arrived at the store and handed in his keys to another employee. Claimant waited to speak to the manager, who was having a lengthy interaction with a customer. By the time that interaction concluded, claimant was "frustrated," and "basically" said to the manager, "I know that you don't want me here and I don't want to be here. I'm miserable and I can't come in anymore. I can't be here anymore." Transcript at 6. The manager confirmed with claimant that he was quitting work with immediate effect. Claimant did not work for the employer again.

(8) The employer had a written policy against workplace harassment that prohibited "disrespectful actions, words, jokes, or comments based on someone's race, ethnicity, age, religion, or any other legally protected class."[2] Exhibit 2 at 14.

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.

Claimant quit work due to dissatisfaction with his compensation and with how he was treated by coworkers. The order under review concluded that claimant quit work only "due to the personal abuse other employees directed toward claimant," and that this was a situation of such gravity that claimant had no reasonable alternative but to quit. Order No. 25-UI-285884 at 3. The record does not show that this was claimant's sole reason for quitting when he did, and while he faced a grave situation based on harassment over perceived sexual orientation, the record does not support the conclusion that he had no reasonable alternative to quitting.

Claimant asserted at hearing that his reason for quitting work was "a toxic environment where [he] was constantly harassed and name called." Transcript at 5. However, on November 6, 2024, claimant requested by text message a meeting with his manager to discuss dissatisfaction with his compensation and request a raise or promotion, and the manager agreed to such a meeting. Claimant did not mention any concerns other than those involving his compensation in the text message or when he met with the manager in person on November 8, 2024, to resign. As discussed in further detail below, claimant has not shown by a preponderance of the evidence that he ever raised the issue of harassment or name-calling with the employer. Moreover, the incidents in which claimant was threatened by customers occurred between two and four years prior to the date claimant quit.[3] This evidence shows that, more likely than not, claimant's dissatisfaction with pay was the primary reason he quit work when he did, and that as of the time he sent the November 6, 2024, text message, he was willing to continue working for the employer if his pay increased, despite any other concerns about the work environment.

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[2] OAR 839-005-0003(13) (January 1, 2016) defines "Protected class," for purposes of Oregon's anti-discrimination laws, to mean "a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic." OAR 839-005-0003(16) provides, "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth."

[3] Due to the amount of time that elapsed between when these incidents occurred and when claimant quit work, they are not discussed further in this decision, as more likely than not, they did not constitute a reason for claimant quitting work when he did.

However, when asked at hearing to explain the timing of his decision to quit, claimant testified, "Honestly, it was Trump getting reelected. Because I knew that the harassment was going to be tenfold just like it was when Biden got elected." Transcript at 14. This testimony, and the fact that claimant did not discuss his complaints regarding pay with the manager on November 8, 2024, despite the manager's willingness to do so, suggest that claimant also quit work when he did due to his belief that his coworkers' treatment of him would worsen following the November 5, 2024, election.

To the extent claimant quit work due to his dissatisfaction with pay, he did not face a grave situation. Claimant did not assert that his pay had been reduced, improperly withheld, or set at a rate below the applicable minimum wage. Instead, claimant's dissatisfaction was based on his belief that he "work[ed] 10 times harder than any other sales person," and therefore should be paid more than them, and that he was treated unfairly regarding a misunderstanding about the Lincoln City assistant manager position. Exhibit 2 at 4. As to each of these reasons, claimant has not shown that a reasonable and prudent person, exercising ordinary common sense, would quit work for that reason, particularly because claimant knew the manager had been willing to meet with him on November 8, 2024, to discuss increasing his pay. Claimant therefore did not face a grave situation based on his pay. Moreover, even if he had faced a grave situation, he had the reasonable alternative to quitting work of meeting with the manager on November 8, 2024 to request a raise, as he had been invited to do.

Furthermore, claimant has not shown that he faced a grave situation as a result of coworkers or managers engaging in politically-oriented comments and name-calling that they believed constituted mutual banter with claimant. Claimant testified that beginning around the time of the 2020 presidential election, he was called names such as "libtard" and "commie" from his coworkers on a regular basis. Transcript at 14. Claimant's manager testified that he "would never have called [claimant] a libtard or. . . the other ones he was saying." Transcript at 21. The manger was asked if he "ever call[ed] [claimant] any names," to which he responded, "Oh, maybe jokingly here and there. . . it was just mutual regular banter at work." Transcript at 21. The manager explained that by his use of the term "banter" he meant "people giving each other a hard time about something." Transcript at 21. The manager admitted that claimant "probably was" called names at work by others, but did not think there was "anything malicious" about it because claimant "would give it to them as much as they would give it to him and things." Transcript at 20-21.

In weighing this testimony, it is more likely than not that the manager made, and permitted other employes to make, comments toward claimant regarding his political views that the manager and other employees did not know were unwelcome or offended claimant. Instead, they viewed these names and comments as "mutual regular banter" appropriate for the workplace. If the manager and others continued to make such comments after claimant advised them that he found the comments offensive and that they were unwelcome, this could constitute a grave situation.

The parties gave conflicting accounts of whether claimant complained to the employer about comments of this nature. Claimant testified that during the first week of September 2024, the timing of which he recalled because it was shortly after his birthday, he approached the manager and assistant manager at their desks and "told them that I have been putting up with this for years and I was done with the name calling. I was done with being called 'commie.' I was done with being called 'libtard.' I was done with the harassment." Transcript at 7; *See also* Transcript at 26. Claimant testified that their response was, "[O]kay," and "We'll. . . lay off. . . [W]e'll let the guys know that you don't appreciate it." Transcript at

7. Claimant asserted that "a few days" later, the "name calling and harassment started again." Transcript at 7. In contrast, the manager testified that this conversation "didn't happen," in September 2024 or at any other time, and denied that claimant had ever told him "that he didn't like any of the names he was being called by [the manager] or anyone else." Transcript at 21. The manager also testified, "just as strong as [claimant] says [the September 2024 conversation] happened, I would say strongly that it didn't happen." Transcript at 27. Additionally, the employer submitted into evidence a statement from the assistant manager, who wrote, "[Claimant] made no attempts to inform me about any acts of harassment that he supposedly had been enduring for years." Exhibit 2 at 7.

Claimant's first-hand testimony regarding whether the September 2024 conversation, or any other complaint regarding the "banter," occurred is entitled to greater weight than the assistant manager's written statement to the contrary. However, in weighing all the evidence, including the manager's first-hand testimony, claimant's account of having complained to the manager and assistant manager about the comments is no more than equally balanced with the employer's rebuttal evidence. Therefore, claimant has not shown by a preponderance of the evidence that he complained about these comments in September 2024 or on any other occasion, and the facts have been found accordingly. As the managers and employees making the comments regarding claimant's political beliefs mistakenly but sincerely believed they were part of reciprocal banter and not offensive or unwelcome, a reasonable and prudent person, exercising ordinary common sense, would not quit work because of the comments without first informing the employer that they found the comments offensive and unwelcome, and the comments persisted after that time. Therefore, claimant has not shown that he faced a grave situation based on those comments at the time he quit work. Moreover, even if claimant had faced a grave situation for this reason, he had the reasonable alternative to quitting work of complaining to management, which claimant failed to prove by a preponderance of the evidence he had done, despite his assertions at hearing to the contrary.

To the extent claimant quit work because of comments that workers in the outside yard made about claimant's perceived sexual orientation, claimant faced a grave situation. Claimant testified, "There were definitely quite a few yard guys that like to call me queer and fairy and gay because I am involved in theater." Transcript at 13. Claimant also testified, "Specifically, one of the yard guys told me that I'm in theaters [s]o I must be gay and all gay people need to be shipped off to an island [t]o be separated from all of the. . . straight people." Transcript at 11-12. In rebuttal, the employer provided several statements from claimant's coworkers, each asserting that they did not witness claimant being harassed. Exhibit 2 at 7-11. The record does not suggest that the manager, who was the employer's only witness at hearing, would have been present for every interaction between claimant and his coworkers in the yard. In weighing this evidence, claimant's first-hand testimony is entitled to greater weight than the employees' written statements and the testimony of a witness who was not present for the interactions in question. Therefore, more likely than not, the employees in the outside yard made the statements alleged by claimant about his perceived sexual orientation. These statements were objectively offensive, inappropriate, and violated the employer's written policy against harassment. A reasonable and prudent person would have quit if subjected to these comments, if there was no reasonable alternative.

However, claimant had the reasonable alternative to quitting work of notifying the employer about the comments. Claimant testified, "I never specifically told [the manager or assistant manager] about those comments the yard guys were making." Transcript at 13. Claimant explained that he did not complain about these comments because he was "fed up" and "didn't really think it would make a difference,"

based on claimant's assertion that he had complained to management about the politically-oriented comments in September 2024, and those comments continued thereafter. Transcript at 13. As previously discussed, however, claimant failed to show by a preponderance of the evidence that he made the September 2024 complaint, or otherwise alerted management to his displeasure with the politically-oriented comments. Therefore, claimant similarly failed to show that, based on the lack of response to an earlier complaint, complaining to management about the perceived sexual orientation comments would likely have been futile. Moreover, as the comments about claimant's perceived sexual orientation unambiguously violated the employer's harassment policy, it can reasonably be inferred that a complaint about such conduct would likely be viewed by the manager in a different light than the politically-oriented "banter" that the manager himself had engaged in. Additionally, the manager testified that had claimant made a complaint of "harassment," the manager "would have told everybody inside and outside to cool it [a]nd we're not going to do that anymore. And then follow up on it just to make sure that it's not happening anymore." Transcript at 22. Accordingly, claimant had the reasonable alternative to leaving work of complaining to management about the harassing comments regarding his perceived sexual orientation. Because claimant failed to avail himself of this alternative, he quit work without good cause.

For these reasons, claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 3, 2024.

DECISION: Order No. 25-UI-285884 is set aside, as outlined above.

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

DATE of Service: April 29, 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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