

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0207

Reversed & Remanded

PROCEDURAL HISTORY: On February 11, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving benefits beginning January 5, 2025 (decision # L0009280619).¹ Claimant filed a timely request for hearing. On March 20, 2025, ALJ Murray conducted a hearing, and on March 26, 2025 issued Order No. 25-UI-287472, reversing decision # L0009280619 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the quit. On March 31, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Place in Roseburg LLC employed claimant from November 2021 until January 5, 2025.

(2) The employer operated a bar, and claimant worked there as a bartender. During her employment, claimant believed the owner of the business subjected her to a hostile work environment and treated her poorly. Claimant thought the owner's treatment got "progressively worse," and that she was "singled out a lot." Audio Record at 19:50.

(3) At hearing, claimant testified that on one occasion, the owner told claimant to "go put on a bikini, maybe you'd bring in business." Audio Record at 20:24. Claimant also testified that on another occasion, the owner had locked the bar's thermostat and the temperature in the bar became uncomfortable, leading claimant and some patrons to complain to the owner. On this occasion, claimant testified the owner said to her, "If [claimant] wasn't so heavy [she] wouldn't be so hot." Audio Record at 20:09.

¹ Decision # L0009280619 stated that claimant was denied benefits from January 12, 2025 to January 10, 2026. However, because decision # L0009280619 found that claimant quit on January 5, 2025, the decision should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 5, 2025, and until she earned four times her weekly benefit amount. See ORS 657.176.

(4) At some point during claimant's employment, a patron approached the owner and told him that claimant had been complaining and he (the patron) told claimant that "if she didn't like the job, she could go somewhere else." Audio Record at 33:39. Afterward, the owner discussed the matter with claimant. Claimant alleged at hearing that on this occasion, the owner yelled at her in the bar in front of her family. However, the meeting took place privately in the bar's office.²

(5) At some point during claimant's employment, claimant had propped open the front door of the bar to bring in outside furniture. At hearing, claimant testified that on this occasion, the owner yelled at her in front of patrons and other employees.

(6) Near the end of claimant's employment, the owner stopped answering claimant's text messages and told her to communicate through the bar's manager. Claimant heard from other people that the owner and his wife were "badmouthing [her] around town." Audio Record at 25:23.

(7) In mid-December 2024, claimant came to believe that the owner would terminate her employment after the first of the year. Claimant based this belief on something she had heard from the bar's manager, who stated that she thought the owner would discharge both herself and claimant in early 2025. Afterward, claimant asked the owner if he was going to discharge her and he did not answer the question. However, the owner did not plan to discharge claimant at the time, and the owner was not aware of the manager or anyone else having told claimant that she would be discharged.

(8) Claimant felt her job was in jeopardy and that it was necessary to explore other work opportunities. Claimant did not typically work on Sundays but arranged to take a coworker's shift on Sunday, January 5, 2025 in exchange for the coworker covering her upcoming shift on Tuesday, January 7, 2025. Claimant needed the coworker to cover her January 7, 2025 shift because she had been offered work somewhere else that evening and she wanted to "test the waters" of the other job opportunity. Audio Record at 19:19.

(9) On January 5, 2025, claimant began working her shift at the employer's bar. The owner learned of claimant's intent to give her January 7, 2025 shift to the coworker so that she could work the other job. The owner went to the bar while claimant was working, and discussed the matter with claimant in the bar's office. The owner told claimant that she was not allowed to trade her January 7, 2025 shift to work somewhere else. In response, claimant turned in her keys, told the owner "he could finish the shift himself if he could do it better[.]" and left the bar without completing the shift. Audio Record at 22:42. Claimant resigned at that time and never worked for the employer again.

CONCLUSIONS AND REASONS: Order No. 25-UI-287472 is set aside, and this matter remanded for further proceedings consistent with this order.

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,

² Claimant alleged this to have occurred in front of members of her family. Audio Record at 37:58. However, the owner testified that the matter was discussed in the bar's office. Audio Record at 37:22. As the two accounts are equally balanced, and claimant has the burden of proof, the facts have been found in accordance with the owner's account.

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.

The order under review concluded that claimant quit work because of the owner’s treatment of her and that claimant established good cause to quit based on that reason. Order No. 25-UI-287472 at 3. The records as developed does not support that conclusion.

As a preliminary matter, the record suggests that one reason claimant resigned was because the owner declined to allow her to trade her January 7, 2025 shift to work the other job. To the extent claimant quit work for this reason, she did not show that she was presented with a situation of such gravity that she had no reasonable alternative but to quit. At hearing, the owner explained that he had no objection to employees trading shifts for personal reasons, illness, or vacation, but that he did not allow employees to work a different job on a day the employer scheduled them to work. Audio Record at 31:39. It is not unreasonable for an employer to insist that an employee work a scheduled shift rather than trade the shift to enable them to work for a different employer. Claimant did not show that a reasonable and prudent person would quit work when not permitted to trade shifts under those circumstances. Claimant quit work without good cause to the extent she quit work based on that reason.

Similarly, claimant quit work without good cause to the extent she resigned because she thought the owner would terminate her employment. Claimant testified at hearing that her manager had told her in mid-December that she and claimant were “going to be fired after the first of the year.” Audio Record at 17:19. Claimant further testified that a week before she resigned, she asked the owner “if [she] was getting fired and [the owner] kind of neglected to answer the question, just kind of go in circles and never told me whether I was or not.” Audio Record at 21:00. For his part, the owner testified that he did not plan to discharge claimant and was not aware of anybody telling claimant that she was going to be discharged. Audio Record at 34:44. Leaving work to avoid a discharge that would not be for misconduct can be considered good cause for quitting in some circumstances. Factors to consider in determining good cause under such circumstances includes how certain the prospect of discharge is and the extent to which being discharged would impair a person’s future job prospects. *See McDowell v. Employment Dep’t.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects). However, because claimant did not face a certain discharge, claimant did not establish good cause to quit based on the holding of *McDowell*. Accordingly, to the extent claimant left work because she thought she would be discharged, claimant quit work without good cause.

To the extent claimant left work because of the owner’s treatment of her, further development of the record is necessary to determine whether claimant quit work with good cause. At hearing, claimant testified that she was “singled out a lot” and “picked on” and that the owner’s treatment got “progressively worse.” Audio Record at 19:50, 20:38. Claimant also offered the testimony of a witness who had been a patron at the bar. This individual testified that claimant was subjected to “bizarre behavior” and “massive emotional abuse.” Audio Record at 27:19. Aside from these broad characterizations, however, the evidence presented of the owner’s alleged mistreatment of claimant was

limited and consisted mainly of the “bikini” and “heavy” comments. The ALJ did not ask the owner about either remark.

On remand, the ALJ should ask questions to develop the record regarding the “bikini” comment. The ALJ should ask claimant when, why, and how many times the owner allegedly made the comment. The ALJ should then ask the owner whether he made the comment and, if so, why, how often, and in what context.

The ALJ should also develop the record regarding the “heavy” comment. The ALJ should make inquiries to better develop the context of when the comment was allegedly made, such as the circumstances surrounding the room temperature in the bar.³ The ALJ should ask the owner whether he made the “heavy” comment and, if so, why.

In addition to these inquiries, the ALJ should ask questions to develop the record regarding claimant’s allegations that the owner yelled at her in front of bar patrons or members of her family. The record shows that claimant alleged this to have occurred in front of members of her family when the owner brought up a bar patron’s complaint with her. Audio Record at 37:58. However, the owner disputed this, testifying that the matter was discussed in the bar’s office. Audio Record at 37:22. Otherwise, claimant testified that “there was numerous times that [the owner] came in and yelled at [her] in front of the whole entire bar”⁴ including one occasion in which claimant had the front door propped open to bring in furniture. Audio Record at 38:22. The ALJ should ask the owner questions to develop whether he yelled at claimant numerous times including on the occasion in which the door was propped open. If the owner acknowledges yelling at claimant, the ALJ should ask questions to develop when and why he did so, and whether he did so in the presence of others.

Claimant also testified that, based on what she heard from other people, the owner and his wife allegedly “badmouth[ed] [her] around town.” Audio Record at 25:23. On remand, the ALJ should ask the owner whether he disparaged claimant to others in their community and if so, when and why he did so.

Finally, claimant testified that she and the owner “butted heads a lot” and he would “criticize [her] work habits.” Audio Record at 23:42, 21:12. The ALJ should make inquiries on remand to develop whether, and if so, to what extent the tension or ill feeling between claimant and the owner was the result of conflicting personalities or legitimate concerns about the quality of claimant’s work performance.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because

³ To this end, the ALJ may also wish to make follow up inquiries relating to the testimony offered by claimant’s witness that it was “really hot” in the bar, claimant brought a fan, and the next day, someone “threw the fan in the office.” Audio Record at 27:14.

⁴ Claimant did testify, however, that, the discussion she had with the owner when she resigned on January 5, 2025 took place privately in the bar’s office. Audio Record at 38:48 (“He took me in the back room one time, and that was the day that I, I quit.”).

further development of the record is necessary for a determination of whether claimant quit work with good cause, Order No. 25-UI-287472 is reversed, and this matter is remanded.

DECISION: Order No. 25-UI-287472 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 7, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-287472 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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.

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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

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