EO: Intrastate
BYE: 20-Sep-2025

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

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0221

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 14, 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 December 22, 2024, through September 20, 2025 (decision # L0008611884). Claimant filed a timely request for hearing. On March 14, 2025, ALJ Contreras conducted a hearing, and on March 21, 2025, issued Order No. 25-UI-286971, modifying decision # L0008611884 by concluding that claimant was discharged, but not for misconduct, within 15 days of her planned voluntary leaving without good cause, and therefore was disqualified from receiving benefits effective December 15, 2024, and until requalified under Department law. On April 10, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Pacific Tool and Gauge employed claimant in their accounts receivable department from October 14, 2024, through December 18, 2024.

(2) During the course of her employment, claimant became increasingly concerned about the behavior of "S," one of the owners of the business. Claimant reported directly to the employer's human resources (HR) manager. However, claimant interacted with S while she was in training, particularly when seeking help with systems or processes, as S was more familiar with some of those systems and processes than claimant's direct supervisor. Claimant felt that S was "a very hostile person" who was "always cussing" and was prone to throwing "temper tantrum[s]." Transcript at 7.

(3) S never directed any of the behavior that claimant was concerned about at claimant herself. However, claimant was "afraid of [S] because [claimant] thought at one point her anger would turn towards [claimant], and [claimant] was afraid to work there." Transcript at 7–8. Claimant eventually spoke to her husband about her concerns, who told her, "Honey, you just need to get out of there." Transcript at 10.

(4) On December 10, 2024, claimant gave the employer notice that she intended to resign on December 20, 2024. Claimant decided to resign because of her concerns about S's behavior. On December 18,

2024, the human resources manager told claimant that she was discharged effective immediately. The employer discharged claimant that day because they had been having issues with their computer systems and, as a result, "a lot of downtime," and it was "almost Christmas." Transcript at 22. The employer's decision to discharge claimant was not related to claimant's work performance.

CONCLUSIONS AND REASONS: Claimant was discharged, not for misconduct, within 15 days of a planned voluntary leaving without 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).

The record shows that the employer discharged claimant on December 18, 2024. On December 10, 2024, claimant gave the employer notice of her intent to resign on December 20, 2024. Because claimant was willing to continue working an additional two days after December 18, 2024, but the employer was not willing to allow her to do so, the work separation was a discharge that occurred on December 18, 2024.

Discharge. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a). "'[W]antonly negligent' means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The employer discharged claimant on December 18, 2024, because, two days prior to claimant's planned resignation and a week prior to Christmas, the employer was experiencing issues with their computer systems. It can be reasonably inferred from this explanation that the employer felt that, given the "downtime" resulting from the systems issues, it made little sense to continue to employ claimant for another two days while her ability to actually perform work was limited. Additionally, the employer's witness explicitly testified that the decision to discharge claimant was not related to her job performance. As such, the record does not show that claimant was discharged due to a willful or wantonly negligent violation of the employer's standards of behavior, and she therefore was not discharged for misconduct.

ORS 657.176(8). ORS 657.176(8) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date

of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date."

Because the employer discharged claimant for reasons that did not constitute misconduct on December 18, 2024, which was within 15 days of claimant's planned quit on December 20, 2024, it is necessary to determine whether claimant's reason for quitting constituted good cause, such that ORS 657.176(8) is applicable to this analysis.

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 decided to quit because of concerns she had about the behavior of one of the owners, "S," whom claimant described as "very hostile," and the belief that these behaviors would eventually turn on claimant herself. Transcript at 7. At hearing, claimant alleged a number of incidents that exemplified S's conduct. These allegations included S throwing a computer monitor off of her own desk "because she had gotten upset because it wasn't working correctly"; S becoming upset over printing out too much documentation, at which point S "almost broke the [printer] because she didn't want it to print"; S "chas[ing] an employee out of the building screaming at her" when that employee quit, and the employee was crying at the time; S slamming the door to her office in a manager's face; Claimant not being permitted to turn up the heat in the office, even though claimant "actually had to buy gloves to work there because it was so cold," or being told by the HR manager that she could turn the heat up but that it would have to be turned back down before S arrived; and S "cussing out the vendors on the phone," including using "the F word… a lot." Transcript at 7, 8, 10, 11–12, 14–15.

By contrast, the employer's witness, their HR manager and claimant's former supervisor, refuted these assertions, explaining that S did push the computer monitor off of her desk but did not throw it; the printers were "constantly acting up," and S's response to the printing issue "could be any of us on any given day"; the employee who quit was not chased out of the building and "was not crying" when she left the building, and the HR manager, not S, was the last person to speak to that employee before she left; S did not "slam" the door in the manager's face but told him she "wasn't in a place to talk to [the manager] right now and shut the door; the heat in the office was set at 71 degrees, and there was no rule forbidding employees from turning up the heat in the office; and that everbody "cuss[ed] in the office," but the HR manager never witnessed S "cussing at people." Transcript at 18, 19, 30, 19, 20, 19.

Because the evidence in the record consists solely of the testimony of the two parties, both of whom offered first-hand accounts of the above allegations, the evidence as to these allegations is equally

balanced. As such, because claimant bears the burden of proof to show that her planned voluntary quit was for good cause, the employer's account is taken as more likely accurate. Therefore, while claimant may have had concerns about S's behavior, claimant did not show by a preponderance of the evidence that S's behavior was actually an objective reason for fearing for one's safety, such that a reasonable and prudent person would have concluded that they had no reasonable alternative but to quit.

Additionally, even if claimant's account of these allegations *were* taken as accurate, the record shows that claimant was not the target of any of the "hostile" behavior that she alleged S had engaged in. Instead, she merely feared that she would be the target of such alleged hostility in the future, but did not show that she would, more likely than not, actually have been such a target. Furthermore, claimant's interactions with S appeared to be primarily focused on getting help with learning the employer's systems and processes. It therefore stands to reason that claimant's interactions with S would have decreased in frequency and duration once claimant was fully trained, lessening the likelihood that claimant would have had uncomfortable interactions with S in the future. Therefore, even if the facts were found in accordance with claimant's testimony, she would not have shown by a preponderance of the evidence that she faced a situation of such gravity that she had no reasonable alternative but to quit. As such, claimant's planned voluntary quit was without good cause.

Because the employer discharged claimant, not for misconduct, within 15 days of the date on which claimant planned to voluntarily leave work without good cause, ORS 657.176(8) applies. However, because the week in which the actual discharge occurred was the same as the week in which the planned voluntary quit was to occur, there is no period of eligibility prior to the disqualification. Claimant is therefore disqualified from receiving unemployment insurance benefits effective December 15, 2024.

DECISION: Order No. 25-UI-286971 is affirmed.

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

DATE of Service: May 16, 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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