

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0232

Reversed
No Disqualification

PROCEDURAL HISTORY: On February 25, 2025, 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 beginning January 26, 2025 (decision # L0009477045).¹ Claimant filed a timely request for hearing. On March 20, 2025, ALJ Gutman conducted a hearing at which the employer failed to appear, and on April 10, 2025 issued Order No. 25-UI-289113, affirming decision # L0009477045. On April 21, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted arguments on April 21 and April 24, 2025. EAB did not consider claimant's April 21, 2025 argument because she did not state that she provided a copy of the argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, both of claimant's arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's April 24, 2025 argument that were based on the hearing record.

FINDINGS OF FACT: (1) Nike, Inc. employed claimant as a senior project coordinator in their human resources (HR) department from July 8 through December 16, 2024.

(2) Throughout her tenure in the role, claimant struggled with the requirements of the job and, as a result, was "very, very stressed" about work. Transcript at 19. Nevertheless, claimant enjoyed working for the employer and wished to continue doing so.

¹ Decision # L0009477045 stated that claimant was denied benefits from January 26, 2025 to January 31, 2026. However, decision # L0009477045 should have stated that claimant was disqualified from receiving benefits beginning January 26, 2025 and until she earned four times her weekly benefit amount. See ORS 657.176.

(3) On December 6, 2024, claimant received an email from her manager, stating that claimant was not meeting the employer's performance expectations in various areas. Claimant responded to the email by "stating [her] case and... proving [her] work." Transcript at 18.

(4) On Friday, December 13, 2024, claimant met with her manager and a director-level executive within the HR department. During that meeting, the manager and director reiterated to claimant that she had not been meeting the employer's expectations, and "acknowledge[d] their accountability in terms of this role wasn't a good fit [for claimant]." Transcript at 11. They then presented claimant with two options: claimant could either be placed on a performance improvement plan (PIP) in which she would be discharged if she did show "immediate and sustained improvement" in all of the areas outlined in the plan within 30 days; or agree to separate from employment. Transcript at 21. Claimant did not believe she was capable of meeting the PIP's requirements within 30 days.

(5) The director told claimant that if she elected to stay and accept the PIP, being on the PIP would prevent claimant from transferring to other roles within the company. Conversely, claimant was told that if she accepted the separation agreement, she would have a "clean record" with the employer that would ensure that she was eligible for rehire. Transcript at 11. In relevant part, the separation agreement itself stated that claimant would be "released from work and placed on paid administrative leave effective December 16, 2024" until she separated from employment on February 1, 2025; that claimant would continue to receive her health and other benefits until the date of separation; that the employer would pay the cost of health insurance for six months following the date of separation; and that the employer would also pay for six months of "career transition services" for claimant. Exhibit 2 at 1–2. Claimant was also told that she was required to make her choice between the two options by the following Monday, December 16, 2024.

(6) Claimant felt "very rushed and kind of pushed to make an answer so fast," but believed that the employer had already "made a determination that [claimant] was not fit for the role," and that she therefore would be discharged at the end of the 30-day period if she chose the PIP. Transcript at 21. Claimant also believed that being discharged would negatively impact her eligibility for rehire with the employer. As such, claimant elected to accept the terms of the separation agreement, as it offered her various benefits and allowed her to remain eligible for rehire. Transcript at 27. On December 16, 2024, claimant notified the employer of her choice, and was placed on paid administrative leave in accordance with the terms of the agreement. Claimant performed no work for the employer after that date. On February 1, 2025, the employer considered claimant separated from work in accordance with the terms of the agreement.

CONCLUSIONS AND REASONS: Claimant 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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The order under review concluded that claimant quit work. Order No. 25-UI-289113 at 3. Claimant disputed this, asserting at hearing that she believed she had been discharged, as she was “already being transitioned out of the company before signing the [separation agreement]” despite the fact that she wished to remain employed. Transcript at 9. However, under OAR 471-030-0038(2), claimant’s separation was a voluntary leaving.

On December 13, 2024, the employer presented claimant with two options: either accept the PIP and attempt to fulfill its requirements within 30 days, or accept the separation agreement and leave work. Claimant chose the latter option. The fact that the employer would have permitted claimant to work for an additional 30 days shows that they were willing to allow claimant to continue working for an additional period of time at the time that claimant made her choice. By contrast, regardless of the fact that claimant wanted, in general, to continue working for the employer, she personally chose to stop working for them at that point because she believed that doing so under the terms of the separation agreement would be more favorable to her than continuing to work for another 30 days and then likely being discharged. Because claimant elected to stop working for the employer despite the employer’s willingness to allow her to continue working for an additional period of time, the separation was a voluntary leaving which occurred on December 16, 2024.²

Voluntary Leaving. 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 voluntarily quit work because she was required to choose between working for an additional 30 days under a PIP, after which she would be terminated if she did not meet the requirements of the PIP; or resigning, by way of agreeing to the terms of the separation agreement the employer offered her. Claimant chose the latter, as she did not believe that she could meet the requirements of the PIP, and was concerned about her prospects of rehire if she was discharged for failing to meet those requirements. The order under review concluded that this did not constitute good cause for quitting, suggesting that it would have been a reasonable alternative for claimant to have “continued to work for employer for at least 30 more days, and if she improved her work performance, she could have worked for employer beyond that time frame.” Order No. 25-UI-289113 at 3. The record does not support this conclusion.

At the time she quit, claimant faced the possibility of being discharged if she instead decided to stay and attempt to fulfill the requirements of the PIP. While the possibility of discharge is not inherently a grave situation, it was in claimant’s case. *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

² Despite the fact that the separation indicated that claimant would separate from employment on February 1, 2025, there was no expectation that claimant would continue to perform any services after December 16, 2024. Therefore, December 16, 2024 is the date on which the employment relationship was severed.

discharge was imminent, inevitable, and would be the “kiss of death” to claimant’s future job prospects); *Dubrow v. Employment Dep’t.*, 242 Or App 1, 252 P3d 857 (2011) (a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Here, had claimant chosen to stay and attempt to fulfill the PIP, she would not have been eligible to transfer to a different position in the company while the PIP was active. Furthermore, the record suggests that being discharged would have had a negative impact on claimant’s eligibility for rehire elsewhere within the company, as claimant believed would be the case. Although the record does not show that claimant was explicitly told that she would *not* be eligible, she *was* told that if she accepted the separation agreement she would have a “clean record” with the employer that would ensure that she was eligible for rehire. It is reasonable to infer from this that the employer would not have said this to claimant unless she would not have had a “clean record” if she failed the PIP and was discharged.

Furthermore, although claimant was not certain to be discharged if she attempted to fulfill the requirements of the PIP, the record shows that she most likely would have been. The PIP required “immediate and sustained improvement” in all areas of performance, and claimant did not believe she was capable of accomplishing this within 30 days. Additionally, the managers involved admitted that claimant was not a good fit for the role, and accepted blame for hiring her into the role. This suggests that the option of pursuing the PIP was, essentially, a mere formality, and that the employer did not expect claimant to succeed if she chose to pursue it. This is further supported by the fact that the employer simultaneously offered claimant the alternative of the separation agreement, as it stands to reason that the employer would not have encouraged claimant to accept it and resign if they believed she was capable of meeting the performance requirements of the position.

Thus, because the prospect of discharge was very probable, and likely would have impaired claimant’s eligibility for rehire with the employer, claimant faced a grave situation. Additionally, claimant had no reasonable alternative but to quit. Other than quitting, the only alternative available to claimant was attempting to fulfill the terms of the PIP, which would not have been reasonable because of the risks described above.

Under these circumstances, a reasonable and prudent person, faced with the prospect of either a very likely discharge that would impact their re-employment prospects or a separation agreement that offered several additional months of healthcare and re-employment assistance, would not have chosen the former option because of the risks it presented. Claimant therefore had no reasonable alternative but to quit.

For the above reasons, claimant quit working for the employer with good cause and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 25-UI-289113 is set aside, as outlined above.

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

DATE of Service: May 23, 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.

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.

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

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