EO: Intrastate
BYE: 15-Nov-2025

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

024
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0236

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 9, 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 from November 17, 2024, through November 15, 2025 (decision # L0007574097).[1] Claimant filed a timely request for hearing. On April 1 and 2, 2025, ALJ Janzen conducted a hearing, and on April 3, 2025, issued Order No. 25-UI-288242, concluding that claimant did not separate from work on or before December 9, 2024, and was therefore not disqualified from receiving benefits based on such a work separation. On April 18, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that she provided a copy of her April 18, 2025, argument to claimant as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's April 29, 2025, argument and the employer's April 18 and May 8, 2025, arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2). Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered any parts of claimant's April 29, 2025, argument and the employer's May 8, 2025, argument that were based on the hearing record.

FINDINGS OF FACT: (1) Sheri Hovgaard Insurance and Financial Services, LLC employed claimant as a service manager from March 7, 2022, through January 17, 2025.

(2) The employer expected that their employees would not leave work prior to the end of their shift or be absent from work unless excused. Claimant understood this expectation.

[1] Decision # L0007574097 stated that claimant was denied benefits from November 17, 2024 to November 15, 2025. However, decision # L0007574097 should have stated that claimant was disqualified from receiving benefits beginning November 17, 2024, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

(3) In 2024, the employer was dissatisfied with several aspects of claimant's work performance. The employer believed that claimant had difficulty working with others, frequently made errors, took more paid time off from work in August 2024 than she had accrued, was otherwise absent an "excessive" amount of time for various reasons, and announced in October 2024 that she would no longer be working on Fridays without seeking the employer's approval and did not work on Fridays thereafter. April 1, 2025, Transcript at 7-8. As of November 14, 2024, the employer had not issued claimant any written warnings for these issues, and did not intend to discharge claimant for them at that time. The employer did not tell claimant that she objected to claimant taking Fridays off, though she did not approve of either the absences or of claimant demanding rather than asking for the time off.

(4) On November 14, 2024, claimant was expected to work through the late afternoon. Claimant had lunch with her daughter during the usual midday break, and her daughter advised her to seek urgent medical attention for seeming excessively stressed, anxious, and depressed. Claimant scheduled an appointment with her primary care provider for later that afternoon, and felt that based on her condition she could not return to work or communicate with the owner for the rest of the day. Claimant instructed her daughter to notify the employer of the situation, though without claimant's knowledge, her daughter notified another person who worked in the employer's office rather than the owner. The employer learned of these developments later that afternoon after investigating claimant's failure to return from her lunch break.

(5) At the appointment, claimant's provider advised claimant to take leave from work until December 12, 2024, and provided a note for claimant to give the employer reflecting this advice. On November 15, 2024, claimant sent the note to the employer electronically.

(6) In November 2024, after beginning her leave of absence, claimant filed an initial claim for unemployment insurance benefits and mistakenly reported on the claim that she had voluntarily quit work. Claimant also filed a worker's compensation claim and a claim for Oregon Paid Leave.

(7) On or before December 12, 2024, claimant's primary care provider provided claimant another note to give the employer, advising that claimant remain on leave through at least January 7, 2025. Claimant forwarded the note to the employer.

(8) On January 3, 2025, claimant and the employer discussed by email claimant's potential return to work. Both expressed a desire that claimant return to work on January 8, 2025.

(9) On January 7, 2025, claimant's primary care provider advised that she remain on leave through February 7, 2025, and provided a note reflecting this advice. Claimant forwarded the note to the employer.

(10) On January 17, 2025, the employer sent claimant a letter discharging her with immediate effect. The letter cited "[i]nsubordination" including "a refusal to comply with assigned duties and workplace requirements," claimant's "refusal" to work on Fridays, a "pattern of excessive tardiness/absenteeism," and claimant "walking out" on November 14, 2024, prior to the end of her shift without first notifying the employer. Exhibit 1 at 42.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

Nature of the work separation. If an 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

The record shows that claimant last performed work for the employer on November 14, 2024. Claimant left work early that day without first notifying the employer, and later provided the employer with a series of notes from her primary care provider excusing her from work through February 7, 2025. The record further shows that on January 17, 2025, the employer sent claimant a letter stating that she was discharging claimant, effective that day. Nevertheless, the employer asserted that claimant quit work on November 14, 2024, because she never intended to return from the leave of absence she began that day. *See* April 1, 2025, Transcript at 28.

The employer's assertion that claimant quit work is based partly on claimant having filed an initial claim for unemployment insurance benefits shortly after she began the leave of absence, and according to the Department's records, reported on the claim that she had quit work on November 14, 2024, for "[h]ealth or medical reasons." April 2, 2025, Transcript at 8. Claimant denied reporting on the claim that she had quit work, and alternately explained that she "was very panic stricken and not [herself]" when filing the claim, and "very likely made a mistake." April 2, 2025, Transcript at 13. The employer also testified that claimant had previously told her of plans to retire in February 2025 when she turned 62 years old. April 1, 2025, Transcript at 26-28. The employer therefore believed that claimant had no intention of ever returning to perform work at the time she began her leave of absence, and that seeking medical treatment and taking the leave of absence was part of a plan to obtain and rely on various government benefits until retirement was possible. However, the dispositive issue in determining the nature of the work separation is whether claimant intended to continue the employment *relationship* for an additional time. Both parties agreed that claimant continued to submit provider notes excusing her from work for a period that ultimately extended to February 7, 2025, and the employer testified that when submitting the notes, claimant would tell her, "I'm not quitting." April 2, 2025, Transcript at 9.

In weighing this evidence, it is more likely than not that claimant intended to continue the employment relationship on and after January 17, 2025, while the employer was unwilling to continue the relationship and severed it on that date. Accordingly, the work separation was a discharge that occurred on January 17, 2025.

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). Absences due to illness or other physical or mental disabilities are not misconduct. OAR 471-030-0038(3)(b).

The employer stated in her letter discharging claimant that the decision was based on the employer's belief that claimant was insubordinate, excessively absent from work, and left work early without notice on November 14, 2024. The order under review concluded that no work separation occurred prior to the December 9, 2024, issuance of decision # L0007574097, and that claimant was therefore not disqualified from receiving benefits based on the work separation described in that decision. Order No. 25-UI-288242 at 3. The record supports this conclusion, but also shows that the employer discharged claimant on January 17, 2025. As the record is fully developed as to that work separation, it is appropriate for EAB to determine whether it disqualifies claimant from receiving benefits.

The discharge analysis initially focuses on the proximate cause of the discharge, which is the incident without which the discharge would not have occurred when it did. *See, e.g.*, *Appeals Board Decision* 09-AB-1767, June 29, 2009. Though the employer's letter cited several reasons for the discharge, the employer had been aware of the conduct that had occurred prior to November 14, 2024, by that date, and had decided not to discharge claimant for it. Therefore, the alleged insubordination and attendance issues occurring prior to November 14, 2024, were not the proximate cause of claimant's discharge on January 17, 2025. However, claimant's leaving work early on November 14, 2024, without notice to the employer and thereafter being absent through the date of discharge was the proximate cause of the discharge because, more likely than not, the employer would not have discharged claimant when she did had that not occurred. Accordingly, that conduct is the focus of the discharge analysis.

The employer reasonably expected that their employees would not leave work prior to the end of their shift or be absent from work unless excused. Claimant understood this expectation. Claimant did not dispute that on November 14, 2024, she left work for the day during her lunch break and did not personally notify the employer that she was doing so. Claimant testified that she could not work that afternoon for medical reasons and scheduled and attended an urgent appointment with her primary care provider during that time. April 1, 2025, Transcript at 9. More likely than not, the absence was due to illness, and therefore did not constitute misconduct under OAR 471-030-0038(3)(b). However, to the extent claimant did not seek to be excused from work or notify the employer that she would be absent that afternoon, she violated the employer's expectation.

Claimant explained that her mental health condition at the time was such that she felt she could not communicate with the employer and therefore directed her daughter to notify the employer that she would be absent that afternoon for medical reasons. April 1, 2025, Transcript at 15-16. For unexplained reasons, claimant's daughter reported the absence to a person who worked in the office, but did not attempt to contact the employer directly. This led to a delay in the employer receiving the message, which occurred after she discovered claimant's absence and began trying to determine why claimant was not at work. Claimant was unaware that the employer had not been directly notified. Because claimant reasonably believed that she had arranged for the employer to be timely notified of her absence, she demonstrated that she was not indifferent to the consequences of her actions, or disregarding the employer's interests. The failure of the employer to timely receive notification therefore was not willful or wantonly negligent, and amounted to no more than ordinary negligence. Accordingly, claimant's actions in this regard did not constitute misconduct.

After November 14, 2024, claimant remained off work at the advice of her primary care provider and forwarded a series of notes from that provider to the employer, excusing her from work through February 7, 2025. Claimant's extended absence from work created a strain on the employer's operations, leading the employer to discharge her. The employer contended that, despite the notes excusing claimant from work, claimant's absence was not actually due to illness. In support of this contention, the employer asserted that prior to November 2024, claimant had announced plans to retire in February 2025 when she reached age 62, and had filed a Social Security Disability Insurance (SSDI) claim as part of that plan. April 1, 2025, Transcript at 26-28. The employer further asserted that when claimant learned that the SSDI claim would take more than a year to potentially be approved, she came up with a new "exit strategy." April 1, 2025, Transcript at 28. The employer implied that this exit strategy involved claimant unnecessarily making a medical appointment on November 17, 2024, to begin a leave of absence, in furtherance of meritless worker's compensation, Oregon Paid Leave, and unemployment insurance claims that would provide benefits until she reached her desired retirement age. *See* April 1, 2025, Transcript at 28. Claimant did not dispute that she had sought these benefits.

In weighing the employer's assertions regarding claimant's medical need for a leave of absence and potential motives for filing the various benefit claims, against the professional opinion of claimant's primary care provider that the leave of absence was medically necessary, the employer has not demonstrated by a preponderance of the evidence that claimant's leave of absence was not due to "illness or other physical or mental disabilities." Accordingly, under OAR 471-030-0038(3)(b), claimant's extended absence from work did not constitute misconduct.

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving benefits based on the work separation.

DECISION: Order No. 25-UI-288242 is affirmed.

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

DATE of Service: May 22, 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.

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.

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*