

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

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0238

Reversed
No Disqualification
TUI Application Not Subject to Denial Based on the Work Separation

PROCEDURAL HISTORY: On February 6, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 12, 2025 (decision # L0009110984).¹ Also on February 6, 2025, the Department served notice of an administrative decision denying claimant's application to participate in the Training Unemployment Insurance (TUI) program (decision # L0009068059). Claimant filed a timely request for hearing on each decision. On April 2, 2025, ALJ Monroe conducted hearings on both decisions,² and on April 15, 2025, issued Orders No. 25-UI-289608 and 25-UI-289610, affirming decisions # L0009110984 and L0009068059, respectively. On April 18, 2025, claimant filed timely applications for review of Orders No. 25-UI-289608 and 25-UI-289610 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 25-UI-289608 and 25-UI-289610 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0238 and 2025-EAB-0239).

FINDINGS OF FACT: (1) Roseburg Forest Products employed claimant as a forklift operator from May 6, 2024, through January 18, 2025. Claimant worked full-time and the position was not temporary. The employer did not offer part-time work, and claimant did not have the ability to request an alternate work schedule due to a lack of seniority.

¹ Decision # L0009110984 stated that claimant was denied benefits from January 12, 2025 to January 3, 2026. However, decision # L0009110984 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 12, 2025 and until he earned four times his weekly benefit amount. See ORS 657.176.

² The Department participated only in the hearing on decision # L0009068059, and the employer did not participate in either hearing.

(2) Prior to working for the employer, claimant suffered a back injury and received treatment under a worker's compensation claim. Claimant was later diagnosed with a bulging disc on his spinal cord. Transcript at 19.

(3) In addition to operating a forklift, the employer routinely had claimant engage in duties during scheduled shut downs such as "cleaning, shoveling, [and] stuff like that." Order No. 25-UI-289608, Transcript at 19-20. The back injury caused discomfort when operating the forklift in certain locations and while engaging in manual labor tasks during the employer's routine shut downs. Order No. 25-UI-289608, Transcript at 18. Claimant believed that performing such tasks would further aggravate his back injury over time, but he did not request modified work duties from the employer. Claimant's doctor told him that surgical intervention was possible with a spinal fusion or a disc replacement, but the surgery had a 25 percent risk of causing claimant to be paralyzed and he did not want to risk the surgery. Transcript at 21.

(4) By August 2024, claimant desired to seek less strenuous work out of concern that, over time, his back injury would worsen. During that month, claimant went to a WorkSource office and was given the opportunity to request a "grant" that would pay for training to obtain a commercial driver license (CDL) at a community college. Order No. 25-UI-289608, Transcript at 6. Claimant applied for the grant.

(5) Over the course of approximately "12 to 13 face to face talks with WorkSource," claimant came to believe that, if approved for the grant, he could quit working for the employer and be eligible to receive unemployment insurance benefits under the TUI program while attending CDL training. Order No. 25-UI-289608, Transcript at 6. Claimant was never told by a WorkSource representative that he would be disqualified from receiving unemployment insurance benefits and, as a result, ineligible to participate in TUI, if he quit work to attend the training program as planned. The CDL training program schedule conflicted with claimant's work schedule such that it was not possible for claimant to attend the program while continuing to work for the employer full-time.

(6) In late November or early December 2024, claimant was notified that he had been approved for the grant. WorkSource then gave claimant a form to apply for the TUI program, which he and a representative of the community college completed by December 16, 2024. On December 16, 2024, a representative of the Roseburg, Oregon WorkSource office faxed the completed application to the Department's Special Programs unit for processing. The Special Programs unit did not immediately process the application because claimant did not have an active claim for unemployment insurance benefits when he submitted the application.

(7) Claimant enrolled in the CDL program at the community college, which would begin on January 21, 2025. In early January 2025, claimant gave notice to the employer that he was resigning, effective January 18, 2025, to participate in the CDL program. Claimant would not have quit work but for his belief, based on numerous conversations with WorkSource representatives since August 2024, that the cost of the CDL program would be paid for, and that he would receive unemployment insurance benefits while attending the program.

(8) On January 14, 2025, claimant filed an initial claim for unemployment insurance benefits. The Department also deemed his December 16, 2024; TUI application as filed that day.

(9) On January 18, 2025, claimant resigned in accordance with the notice he gave the employer earlier in the month.

(10) On January 21, 2025, claimant began attending the CDL training program. Claimant successfully completed it as scheduled and was issued a CDL.

(11) On February 6, 2025, the Department issued decisions # L0009110984 and L0009068059, disqualifying claimant from receiving benefits based on the conclusion that claimant voluntarily quit work without good cause, and denying claimant's TUI application because the work separation disqualified him from receiving benefits under ORS 657.176, respectively. The Department considered the CDL program an approved "career or technical training" program under ORS 657.335(1), but did not assess whether claimant would otherwise have been considered an "eligible dislocated worker" under ORS 657.335(2) if he had not been disqualified under ORS 657.176.

CONCLUSIONS AND REASONS: Claimant voluntarily quit work with good cause. Claimant's TUI application is not subject to denial based on the work separation, and the Department may issue a new administrative decision allowing the application or denying it on a different basis.

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). Claimant had spinal degeneration, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Per OAR 471-030-0038(5)(b)(D), leaving work without good cause includes "[l]eaving to attend school, unless required by law[.]"

ORS 657.335 provides:

As used in ORS 657.335 to 657.360:

(1) "Career and technical training" means training or retraining and basic education, including literacy skills, designed to prepare individuals for gainful employment in recognized or new occupations or to prepare individuals to become self-employed. "Career and technical training" does not include programs of instruction for an individual, including transfer credit programs of instruction given at community colleges, that are primarily intended to lead toward a baccalaureate or higher degree or training that has for its purpose the preparation of individuals for employment in occupations that require a baccalaureate or higher degree from institutions of higher education unless approved by the Director of the Employment Department.

(2) “Eligible dislocated workers” means individuals who are not disqualified from benefits under ORS 657.176 and who:

(a) Have been terminated or laid off or who have received a notice of termination or layoff, are eligible for or have exhausted their entitlement to unemployment compensation and are unlikely to return to their previous industry or occupation;

(b) Have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise;

(c) Are long term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age;

(d) Were self-employed, including farmers and ranchers, and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters;

(e) Returned to service in the Oregon National Guard or the military reserve forces of the United States following active duty service;

(f) Have separated from a declining industry; or

(g) Have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at their place of employment.

ORS 657.340 provides, in relevant part:

(1) Dislocated workers approved for career and technical training may not be denied unemployment insurance benefits solely because they are attending career and technical training, nor shall such individual be denied benefits by reason of leaving work to enter such training if the work left was part-time or temporary or paid less than 80 percent of the individual’s average weekly wage during the base year.

(2) Notwithstanding provisions of this chapter relating to availability for work, actively seeking work or refusal to accept suitable work, dislocated workers approved for career and technical training and otherwise eligible for benefits are not ineligible for such benefits or waiting week credit because of attendance in career and technical training.

* * *

OAR 471-030-0080 (January 11, 2018) provides, in relevant part:

* * *

(3) To receive benefits for any week during career and technical training, a dislocated worker who is otherwise eligible for unemployment insurance benefits must:

(a) Submit a written application for approval of career and technical training on forms prescribed or approved for such purpose by the Director, with the Employment Department Benefits Section — UI Training Programs Unit within 90 days of:

(A) Certification as a dislocated worker; or

(B) Termination from the dislocating employment; or

(C) The filing of a claim for unemployment insurance benefits; and

(b) Submit to the Employment Department a timely claim for such week in accordance with OAR 471-030-0045(4) which establishes the individual:

(A) Was physically present in the individual's labor market as defined in OAR 471-030-0036(6); and

(B) Attended and participated in all scheduled classes for each week of approved career and technical training; or

(C) If the individual failed to attend or participate in all scheduled classes during the week, was able and available for work; and

(c) At the end of each term provide to the Employment Department grades or completion of program documentation from the training facility which certifies that the claimant was satisfactorily pursuing the approved career and technical training; and

(4) Decisions of the Director to approve or disapprove an application for course approval or to discontinue such approval for one or more weeks during career and technical training or to approve or deny supplemental benefits under the provisions of ORS 657.335 through 657.360 shall be in writing, shall set forth the reasons therefore, and shall be served upon the claimant by mailing to the claimant's last known address of record with the Employment Department.

(5) As used in ORS 657.335(1):

(a) "Eligible dislocated workers" includes:

(A) For purposes of ORS 657.345(1), any worker attending training financed wholly or in part, or directly delivered by, a recipient or subrecipient administering Title 1B of the Workforce Investment Act of 1998 (P.L. 105-220).

(B) For purposes of ORS 657.345(2), any worker identified as dislocated by the Employment Department under ORS 657.335(1).

(b) "Unlikely to return to their previous industry or occupation" includes the following:

(A) The individual has been identified as meeting the Worker Profiling Program participation threshold developed by the Employment Department, or

(B) The individual has been permanently separated from an employer in an occupation identified as declining by the Employment Department in that geographic area in which the claimant resides, or

(C) The individual has been evaluated and referred to training by a vocational rehabilitation provider, including but not limited to Vocational Rehabilitation Division, Workers Compensation Division, or a private insurance carrier.

(c) "Long-term unemployed" means unemployed from the dislocated occupation for at least 15 of the last 26 weeks or for at least 8 consecutive weeks immediately prior to application (including survival jobs during such period).

* * *

(9) The determination that an individual meets the definition of dislocated worker may be made by the Employment Department for purposes of paying benefits under ORS 657.335 to 657.360.

Voluntary leaving. Claimant quit work because he believed that the TUI program would allow him to attend CDL training while receiving unemployment insurance benefits. The order under review concluded that claimant left work to attend school, and therefore, under OAR 471-030-0038(5)(b)(D), quit without good cause. Order No. 25-UI-289608 at 3. The record supports that claimant left work to attend school, and to that extent, left work without good cause. However, the record also shows that claimant would not have left work but for his belief that doing so would entitle him to unemployment insurance benefits through the TUI program, and this belief was formed through extensive contacts with WorkSource about the CDL training he sought. Therefore, information claimant received from WorkSource that led to his decision to quit work is properly the subject of the good cause analysis.

Claimant asserted that in August 2024, he first contacted WorkSource seeking assistance in transitioning to a new line of work that would be less physically demanding, due to the bulging disc on his spinal cord. Order No. 25-UI-289608, Transcript at 17-19. Claimant worried the repetitive physical exertion would increase his pain and hasten the need for surgical intervention, which claimant understandably felt posed an unacceptable risk of paralysis at a 25 percent chance.

Claimant specifically inquired about a CDL training program offered by a local community college. While this prospective line of work would seemingly involve similar physical demands to operating a forklift, claimant explained that the employer occasionally expected him to do other types of work such as "cleaning, shoveling, [and] stuff like that," and claimant was concerned about the long-term impact that engaging in such activities would have on his back injury. Order No. 25-UI-289608, Transcript at 20. Pursuing financial assistance through WorkSource to attend CDL training ultimately led claimant to quit working for the employer after he came to believe that such assistance would be provided, under circumstances that amounted to good cause.

Claimant's testimony suggested that he would not have quit working for the employer when he did to attend the CDL training without the training program being paid for by an outside source, and without receiving unemployment insurance benefits under the TUI program, because he could not otherwise afford to do so. *See* Order No. 25-UI-289608, Transcript at 6-7, 24. The time demands of the CDL program were such that they conflicted with claimant's ability to continue working for the employer, as the employer did not offer part-time work or flexible work schedules. Claimant testified that over the course of "12 to 13 face to face talks with WorkSource," he completed a "checklist" of requirements to obtain payment for the cost of the CDL training, which included interviewing CDL drivers about their work, undergoing a background check, and obtaining a written commitment from an employer to hire him once he obtained a CDL. Order No. 25-UI-289608, Transcript at 9-10. Claimant learned from WorkSource in late November or early December 2024 that he had been approved to receive a "grant" for the cost of the CDL program.³ Order No. 25-UI-289608, Transcript at 10. Claimant's attention then turned to seeking unemployment insurance benefits from the Department for the time he would be attending the training.

The record shows that claimant was provided a blank application for the TUI program, which he completed and signed on December 3, 2024. The application contained a second portion that a representative of the school offering the program was to complete, and this portion was completed and signed on December 16, 2024. The record suggests that claimant presented the entire completed application to the Roseburg WorkSource office that day, who faxed the application to the Department's Special Programs unit on claimant's behalf. The TUI program essentially serves to excuse from requirements relating to availability for work and actively seeking work claimants displaced from their usual line of work and attending approved training programs, who are otherwise eligible for regular unemployment insurance benefits. *See* ORS 657.340(2). The record suggests claimant was not informed when the Roseburg WorkSource office faxed the application that he would not be eligible for the program because he did not have an active unemployment claim. The Department did not process claimant's TUI application when it was received. The Department did not notify claimant of the application's status as of January 18, 2025, when his resignation became effective so that he could begin the training program on January 21, 2025.

However, that WorkSource gave claimant a TUI application and later faxed the completed application for processing on his behalf suggests that the WorkSource representative claimant had been dealing with either misunderstood TUI's purpose and requirements, or was unaware of claimant's employment and claim status, though the latter seems less likely in view of his "12 or 13" visits over the preceding four months. Claimant's contention that he was never told by a WorkSource representative that he would be disqualified from receiving unemployment insurance benefits if he quit work to attend the training program and applied for TUI is supported by this evidence. Moreover, it can reasonably be inferred that, more likely than not, the WorkSource office provided claimant with misinformation about the TUI program, which caused him to reasonably but mistakenly believe that quitting work would lead to him receiving unemployment insurance benefits while he attended CDL training. Under these circumstances, a reasonable and prudent person, with the characteristics and qualities of an individual with an impairment such as claimant's, would have sought WorkSource assistance in transitioning to a less physically demanding line of work in an effort to preserve their back, and based on their representations

³ It is unclear from the record what the source of this grant was, as the statutes and rules pertaining to TUI do not provide for funding the costs of training programs directly.

regarding financial assistance, would have quit work to pursue the training claimant did in order to lower the risk for needing a potentially debilitating surgery in the future. Claimant therefore faced a grave situation.

Further, claimant had no reasonable alternative to leaving, as he had no reason to suspect that his trust in WorkSource to provide accurate information, and alert him to obvious errors in the plan they jointly developed for him to receive unemployment insurance benefits while attending CDL training, was misplaced. Accordingly, claimant quit work with good cause, and is not disqualified from receiving unemployment insurance benefits under ORS 657.176 based on the work separation.

TUI application. On January 14, 2025, claimant filed an initial claim for unemployment insurance benefits in accordance with his plan to quit working for the employer on January 18, 2025. The Department thereafter processed his December 16, 2024, TUI application, and on February 6, 2025, issued decision # L0009068059, denying the application because claimant was disqualified under ORS 657.176 from receiving unemployment insurance benefits based on the conclusions of decision # L0009110984 regarding the work separation. Order No. 25-UI-2896110 concluded that because decision # L0009110984 was affirmed on appeal and claimant remained disqualified from receiving benefits based on the work separation following a hearing on that decision, claimant's TUI application was properly denied pursuant to ORS 657.335(2). Order No. 25-UI-2896110 at 5. At the time Order No. 25-UI-2896110 was issued, the record supported this conclusion. However, as previously discussed, EAB's decision reverses Order No. 25-UI-289608 and concludes that claimant is not disqualified from receiving unemployment insurance benefits under ORS 657.176 based on the work separation. Therefore, the record no longer supports the conclusions of Order No. 25-UI-2896110 regarding claimant's TUI application.

The Department's representative testified that claimant's TUI application was denied solely because of the work separation disqualification. Order No. 25-UI-289610, Transcript at 7. The representative further testified that the CDL program claimant completed was a "qualifying program" under ORS 657.335(1) and applicable rules, but claimant's status as a "dislocated worker" within the meaning of ORS 657.335(2) was not determined due to the work separation disqualification. Order No. 25-UI-289610, Transcript at 8-9. Because claimant is not disqualified from receiving unemployment insurance benefits under ORS 657.176 based on the work separation, his application to participate in TUI cannot be denied on that basis. Therefore, under OAR 471-030-0080(9), the Department should determine whether claimant otherwise meets the definition of "dislocated worker" and, accordingly, whether his TUI application should be allowed. The Department may issue a new administrative decision allowing claimant's TUI application, or denying the application on a basis other than being disqualified from receiving benefits due to separating from the employer.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation. Claimant's application to participate in the TUI program is not subject to denial based on a work separation disqualification, and the Department may issue a new administrative decision allowing claimant's TUI application, or denying it on a basis other than being disqualified under ORS 657.176.

DECISION: Orders No. 25-UI-289608 and 25-UI-289610 are set aside, as outlined above.

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

DATE of Service: May 21, 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.

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