EO: Intrastate
BYE: 10-Jan-2026

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

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VQ 005.00
DS 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0243

Affirmed
No Disqualification Weeks 03-25 and 04-25
Disqualification Effective Week 05-25

PROCEDURAL HISTORY: On February 13, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, within 15 days of a planned voluntary leaving without good cause, and was therefore not disqualified from receiving unemployment insurance benefits for the weeks of January 12, 2025 through January 25, 2025 (weeks 03-25 through 04-25), but disqualified from receiving benefits effective January 26, 2025 (decision # L0009210415).[1] Claimant filed a timely request for hearing. On April 3, 2025, ALJ Chiller conducted a hearing at which the employer failed to appear, and on April 9, 2025, issued Order No. 25-UI-288949, affirming decision # L0009210415. On April 23, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument on April 23, 2025. EAB did not consider claimant's April 23, 2025, written argument because they did not state that they provided a copy of their argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Claimant also submitted a written argument on April 29, 2025. Claimant's April 29, 2025, written argument 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 the parts of claimant's April 29, 2025, argument that were based on the hearing record.

[1] Decision # L0009210415 stated that claimant was denied benefits from January 26, 2025, to January 10, 2026. However, decision # L0009210415 should have stated that claimant was disqualified from receiving benefits beginning Sunday, January 26, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

In addition to presenting arguments, claimant's April 29, 2025, argument requested that EAB consider additional evidence under OAR 471-041-0090(1)(b). Specifically, claimant requested that a three-page Indeed employee review document and a March 31, 2025, letter claimant sent to the Oregon Medical Board complaining of the practices and patient care of the employer's supervising physician be considered by EAB. Claimant's Argument at 4-8.

Under OAR 471-041-0090(1)(b), "Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that: (A) The additional evidence is relevant and material to EAB's determination, and (B) Factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record."

Both the employee reviews from Indeed and the March 31, 2025, letter predated the April 3, 2025, hearing in this matter. Since the documents existed prior to the hearing, claimant did not show that factors beyond her reasonable control prevented her from offering them at the hearing. Further, the employee reviews are immaterial, and the contents of the complaint letter are largely duplicative of evidence already in the record and are not relevant and material to EAB's determination for that reason. Accordingly, claimant's request is denied.

FINDINGS OF FACT: (1) Portland Allergy & Asthma, LLC employed claimant as a certified physician assistant from October 31, 2023, until January 14, 2025.

(2) Shortly after claimant began working for the employer, she developed a "pretty severe" cough and, though ill, felt pressured to work by the employer's clinic manager at the time. Transcript at 19. On that occasion, the clinic manager asked claimant, "Can you just sit in the office for shots or are you feeling awful?" Exhibit 6 at 1. Claimant responded that she could probably do so, to which the clinic manager stated, "I would appreciate it. I hate to ask but we have so many shot patients today." Exhibit 6 at 1.

(3) In June and early July 2024, claimant was involved in a car accident, developed a bronchitis infection, and her sister passed away. These difficulties required claimant to use her accrued paid time off (PTO) to take some days off work. These absences at the start of summer allergy season, where the employer saw an increase in patients, resulted in heavier schedules on the days claimant worked. At times, claimant was assigned as many as 21 patients per day, when she believed a more reasonable daily amount to be 13 patients per day.

(4) Claimant's heavier schedule in the summer of 2024 caused her to work overtime hours. Claimant and the employer disagreed about how the overtime impacted her accrual of PTO. Claimant felt that the overtime should count toward her accrual of PTO and requested that the employer treat it as doing so. The existing policy had been that claimant worked 32 hours per week and accrued 1 hour of PTO per 21 hours worked. Under this policy, the employer expected claimant to accrue no more than 80 hours of PTO per year, but the terms of the policy were ambiguous as to whether claimant could accrue more than 80 hours of PTO in a year. The employer's clinic manager and Human Resources (HR) manager considered claimant's request to accrue PTO by working overtime, and on September 11, 2024, met with claimant to advise that the request was denied and as a matter of office policy claimant could accrue a maximum of 80 hours of PTO per year.

(5) During the September 11, 2024, meeting, the managers told claimant that her recent use of paid time off was bad for business and had caused the clinic to lose customers. Claimant felt that the employer lacked empathy regarding the loss of her sister and the other circumstances causing her to take time off. Claimant also regarded the capping of her PTO accrual as unfair.

(6) Claimant is an Asian person and believed that the employer subjected her to racist treatment on that basis. In October 2024, a colleague told claimant that the clinic's owner and supervising physician had stated to the colleague that, "I was concerned when first hiring [claimant], you know because she's Asian. I wasn't sure how well her English was going to be, but she seems to be doing okay so far." Exhibit 2 at 1. Claimant also noticed during her employment that the clinic manager often addressed her in a harsh or condescending tone yet was friendly toward other employees. Claimant believed that this difference in treatment was because of her race.

(7) During her employment, claimant noticed that the supervising physician would at times order tests she viewed as unnecessary, such as breathing tests for asthma or food skin tests for allergies when the patient in question did not have symptoms. Claimant considered the physician's approach to be that "everything should be tested" even if not "medically indicated." Transcript at 24. For example, claimant once saw a patient who had no symptoms but who insisted on having a skin food test administered. Claimant told the patient that the skin food test was not medically indicated and declined to give the patient the test. Claimant learned that the patient later contacted the clinic, asked for the test, the physician performed it for him, and the results were negative.

(8) Claimant thought the physician's practice of ordering tests when a patient did not have symptoms was unethical because, for insurance to reimburse for the tests, claimant believed the physician would have to have falsely stated in his notes that the patients had symptoms. However, claimant was never asked to lie on a medical record and it was within the scope of the physician's authority to decide what test to administer to patients.

(9) Claimant had a history of depression and felt that the employer was making her mental health worse. During her employment, claimant felt stressed out and had trouble sleeping.

(10) On January 13, 2025, claimant left her keys in the door of her home in the morning, and later noticed she had typed patient notes in the wrong section of a document. Claimant determined that she was not feeling well mentally and took the remainder of the day off work.

(11) On January 14, 2025, claimant reported to work and, during her shift, the HR manager asked her repeatedly what caused her to be ill the day before. Claimant thought the questions were intrusive and interfered with her ability to take time off to feel better. Claimant decided it was best for her to quit working for the employer.

(12) That day, January 14, 2025, claimant gave the employer notice of her intent to resign in two weeks, January 28, 2025. A few hours later, the clinic manager came by claimant's office and told her to leave at the end of the day, as that was in the "best interest of both parties[.]" Transcript at 5. Claimant finished her workday and did not work for the employer thereafter.

CONCLUSIONS AND REASONS: The employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving without good cause.

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).

The work separation was a discharge that occurred on January 14, 2025. On that date, claimant gave the employer notice that she planned to quit work on January 28, 2025. However, the employer did not allow claimant to work through her notice period, informing her that it was in the "best interest of both parties" for claimant to end her employment at the end of the day. Transcript at 5. Because claimant was willing to continue working for the employer until January 28, 2025, but was not allowed to do so by the employer, the work separation was a discharge that occurred on January 14, 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). 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 January 14, 2025, after advising claimant to leave at the end of the day, as that was in the "best interest of both parties[.]" The record fails to show that the employer discharged claimant because she had engaged in a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her, or a disregard of the employer's interests. Accordingly, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a).

ORS 657.176(8). The analysis continues because ORS 657.176(8) applies to this case. 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."

The employer discharged claimant, but not for misconduct, on January 14, 2025, which was within 15 days of claimant's planned leaving on January 28, 2025. Therefore, the applicability of ORS 657.176(8) turns on whether claimant's planned leaving was without good cause.

Voluntary Leaving. "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 a history of depression, 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.

Claimant's planned leaving was without good cause. At hearing, claimant testified that she submitted notice of her resignation because her "workplace has gotten so toxic . . . that [she] couldn't continue performing [her] duties." Transcript at 6. However, claimant testified that the final incident that caused her to give notice of the planned quit was the HR manager's inquiries regarding why she left work early on January 13, 2025. Transcript at 28. This reason for leaving work can logically be placed together with the clinic manager's request, shortly after claimant started employment, that claimant work despite her cough, as well as claimant's view that the employer had lacked empathy and imposed an unfair cap on PTO accrual during the September 11, 2024, meeting. Claimant also raised being subjected to allegedly racist treatment and the supervising physician's test ordering practices as reasons for giving notice of her resignation. Transcript at 8-9, 23-28. The record shows that these reasons for leaving work, whether considered individually or in combination, did not constitute good cause to quit.

As to the HR manager's repeated questions on January 14, 2024, regarding what caused claimant to take half of the previous day off work, the inquiries were intrusive but did not constitute a grave situation. While the repeated questions were unwelcome, there is no evidence that the HR manager threatened claimant when asking the questions. The record does not show that claimant faced any adverse repercussions for declining to provide the information, and so even if this situation was grave, politely refusing to provide the information was a reasonable alternative available to claimant.

With respect to the clinic manager's request for claimant to work on a day that she had a cough, claimant also did not face a grave situation. The incident occurred early during claimant's roughly fifteen-month period of employment, and its remoteness in time compared to the date of claimant's decision to quit suggests that claimant did not consider this situation grave. Further, while it was a questionable practice to place any pressure on claimant to work while she was ill, the record shows that the text exchange between claimant and the clinic manager was not threatening, and there was no suggestion that claimant would have faced adverse consequences if she declined. Exhibit 1 at 6. Moreover, the task claimant was asked to perform of "just sit[ting] in the office for shots," appeared narrow in scope and feasible for claimant to undertake while experiencing a cough.

Regarding claimant's view that the employer had lacked empathy and imposed an unfair cap on PTO accrual during the September 11, 2024, meeting, a reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant's would not leave work based on these reasons. It is regrettable that, during the meeting, the clinic manager and HR manager were not more understanding of the difficult life events that caused claimant to take some days off work in the summer of 2024. To discuss the circumstances in blunt terms, such as bad for business and causing the clinic to lose customers, lacked sensitivity. However, the record supports the employer's

view that claimant's absences may have impacted patient retention during that time, and does not show that the employer conveyed this concern to claimant in a manner that was threatening or oppressive.[2] Moreover, claimant did not establish that the employer's denial of her request to calculate PTO in the manner she desired presented her with a grave situation. The question of whether claimant could accrue more than 80 hours of PTO in a year was unforeseen by the parties at hire, and claimant did not show that the employer establishing a policy capping PTO accrual at 80 hours was prohibited by law or similar authority.

With respect to claimant's allegations of racist treatment, the physician's comment referencing her status as an Asian person and questioning her proficiency with English was insulting. However, claimant did not assert or show that the physician ever subjected her to any mistreatment, nor did claimant establish any link between the physician's comment and any of claimant's points of dissatisfaction with the employer. Further, given that the physician's comments were relayed to claimant by another employee, there is some risk that the exact words the physician used were different than what was relayed to claimant by the employee. Additionally, while claimant felt that the harsh or condescending tone with which the clinic manager addressed her was attributable to claimant's race, claimant failed to show that the clinic manager engaged in racially-motivated disparate treatment merely because she was friendly toward other employees, but not toward claimant. Accordingly, claimant did not face a grave situation based on the physician's comment or clinic manager's unfriendly treatment.

Finally, with respect to claimant's objections to the physician's practice of ordering tests that claimant viewed as unnecessary, claimant did not face a grave situation. Claimant may have disagreed with the physician's approach, but claimant conceded at hearing that it was within the scope of the physician's authority to decide what tests to administer to patients. Transcript at 25. Claimant did not show how the physician's practice of ordering tests she considered unnecessary would affect claimant personally. While claimant believed that, for insurance to have reimbursed for the tests, the physician would have had to falsely state in his notes that the patients had symptoms they did not have, claimant was never asked to lie on a medical record. Furthermore, when pressed at hearing, claimant could not explain how the physician's approach to ordering tests would subject her to any professional discipline or jeopardize her licensing or certification.

For the foregoing reasons, claimant's January 28, 2025, planned voluntary leaving was without good cause. Thus, because the employer discharged claimant, but not for misconduct, within 15 days prior to the date she planned to voluntarily leave work without good cause, ORS 657.176(8) applies to this case. Accordingly, ORS 657.176(8) requires that claimant be disqualified from receiving unemployment insurance benefits effective January 26, 2025 (week 05-25). Claimant is *not* disqualified from receiving benefits for the weeks of January 12, 2025, through January 25, 2025 (weeks 03-25 and 04-25).

[2] Further, there is evidence suggesting that the managers may have conveyed their views in a somewhat diplomatic fashion. In a September 12, 2024, email, which purported to document what the parties discussed the day before, the clinic manager wrote, "We discussed that repeated, unplanned, days off results in patients needing to reschedule their appointments at the last minute which in turn creates heavier schedules for you when you return which also results in OT hours for you to get caught up. We also lost some patients who chose not to come back due to the need for multiple rescheduled appointments in a short period of time." Exhibit 8 at 1.

DECISION: Order No. 25-UI-288949 is affirmed.

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

DATE of Service: May 27, 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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