

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0260

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 26, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits from February 22, 2025 to January 31, 2026 (decision # L0009440408). Claimant filed a timely request for hearing. On April 16, 2025, ALJ Honea conducted a hearing, and on April 21, 2025, issued Order No. 25-UI-290098, modifying decision # L0009440408 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective January 26, 2025. On April 29, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Central Oregon Veteran and Community Outreach, Inc. employed claimant from November 7, 2024 until January 27, 2025. Claimant worked as a village monitor in the employer's "veterans village," a facility that housed veterans experiencing homelessness. Transcript at 10.

(2) On or about December 18, 2024, claimant was in the facility's TV room with "N.," a resident of the facility. Another resident entered the room and began an argument with N., yelling at him. Claimant understood N. to be afraid of the resident, as N. had told claimant that the resident had harassed him in the past and claimant observed N. leave common areas when the resident was present. The resident was able-bodied and about 40 years old, while N. was frail, elderly, and disabled. However, the resident did not hit or physically touch N. After about five minutes, claimant was able to de-escalate the situation and the resident left the room.

(3) Claimant believed he gave a written report regarding the December 2024 incident to his manager. However, the employer had no report documenting the incident in their files.

(4) On January 19, 2025, the resident who initiated the December 2024 incident with N. got into a verbal altercation with claimant in which the two yelled at each other. Claimant was in the TV room, and the resident did not like claimant's presence there, believing he spent too much time sitting in a recliner. The resident "attempted to give [claimant] various orders," while claimant repeatedly commanded the

resident to stop in a loud tone. Transcript at 19. Claimant went to a kitchen area, and the resident followed him there and made a comment about his combat training, which claimant interpreted as the resident threatening to physically attack him. Claimant then called 911, the resident stopped engaging with claimant, and claimant went to his vehicle to await the police. A sheriff's deputy arrived, and claimant explained the situation, but the deputy did not arrest or charge the resident or write a police report about the incident. Soon thereafter, claimant's manager called claimant and told him there was no need to complete his shift and to go home. Claimant did so.

(5) The employer then began an investigation of the January 19, 2025 incident. On January 20, 2025, the employer placed claimant on paid administrative leave to ensure his safety while they investigated the matter. The employer's human resources (HR) manager interviewed claimant and the resident as part of the investigation. The December 2024 incident came to light during the investigation, and the HR manager learned about the December 2024 incident for the first time on January 20, 2025. The HR manager interviewed N. about that matter.

(6) On January 23, 2025, the employer completed the investigation into the January 19, 2025 incident. The employer concluded that claimant and the resident shared responsibility for the altercation, that it was verbal in nature only, and involved the men yelling at each other. The employer also concluded that the resident did not hit or physically touch N. during the December 2024 incident because, although claimant believed the resident had punched N. several times and stated as much to the HR manager in his interview, N. denied being physically touched by the resident during his interview.

(7) On January 23, 2025, the employer met with claimant. Claimant insisted that the employer remove the resident from the facility. The employer stated that because the altercation was verbal only and there was no physical touching, they would not remove the resident. The employer also stated that they instead planned to take certain actions to correct the resident's behavior, such as removing the resident from a committee on which he served.

(8) During the January 23, 2025 meeting, the employer presented claimant with an action plan. The plan called for claimant to return to work on January 27, 2025, with a significantly modified schedule for two weeks thereafter to allow for training and ensure that claimant did not work alone. Then, after the two-week period ended, the plan called for a permanent minor change to the schedule to improve his opportunities to ask questions or express concerns going forward.

(9) Specifically, claimant's work schedule had been Mondays, Wednesdays, and Fridays, from 4:00 p.m. to 9:00 p.m. and Saturday or Sunday, alternating week to week, from 12:00 p.m. to 6:00 p.m. Under the plan, for a two-week period beginning on January 27, 2025, claimant would start each of his shifts at 11:00 a.m. and work with the employer's more-experienced day staff "100% of the time . . . during the day" and "never be alone." Transcript at 30. During the two-week period, claimant was to undergo additional training relating to safety protocols, background on the populations the employer served, de-escalation strategies, and best practices for documenting incidents. After the two weeks ended, claimant's weekday shifts were to change to 3:00 p.m. to 8:00 p.m. to ensure an "hour overlap" with the employer's day staff, and enable claimant a better opportunity to ask questions or express concerns. Transcript at 30.

(10) During the January 23, 2025 meeting, the employer specified that upon claimant's return to work, some limited contact with the resident was unavoidable. However, the employer advised that the resident would be instructed to leave the room if claimant was present, and that communication between the two would be kept at a "need basis" only. Transcript at 37.

(11) The employer believed that claimant agreed during the meeting to return to work on January 27, 2025, under the terms of the action plan. Claimant believed that he maintained that he would work at the facility again only if the resident was removed.

(12) On January 27, 2025, claimant reported to work and saw that the resident was also present at the facility. Claimant went to the office and told his manager that he would leave the workplace if the resident was also there. The manager declined to make the resident leave the facility. After about ten minutes, claimant left the facility. Later that day, the employer sent claimant an email stating that claimant was scheduled to work the next day, January 28, 2025. The email stated that the employer hoped claimant would return to work, but that, if he failed to do so, the employer would consider claimant to have resigned. Claimant did not respond to the employer's email and never worked for the employer again.

CONCLUSIONS AND REASONS: Claimant voluntarily left work 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 work separation was a voluntary leaving that occurred on January 27, 2025. On that date, claimant reported to work for the first time after the January 19, 2025 incident. When he arrived, he saw that the resident was also there. Though the employer had previously told him that some limited contact with the resident was unavoidable upon his return to work, claimant told his manager that he would not remain at the workplace if the resident was also there. Then, about ten minutes into his shift, and after the manager declined to remove the resident from the facility, claimant left the workplace. Though claimant was scheduled to work the next day, January 28, 2025, and the employer reminded him of such by email, claimant did not respond to the email and never worked for the employer again. Claimant's conduct of leaving the workplace on January 27, 2025 ten minutes into his shift, failing to respond to the employer's email, and failing to work the January 28, 2025 shift (or ever again) for the employer, demonstrated that, as of January 27, 2025, claimant was unwilling to continue to work for the employer for an additional period of time. Therefore, the work separation was a voluntary leaving that occurred on January 27, 2025.

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). "[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.

As a preliminary matter, the parties disputed whether the resident physically attacked N. during the December 2024 incident. Claimant testified that the resident punched N. multiple times during the December 2024 incident, and that he feared N. would be seriously injured. Transcript at 14, 17-18. However, the employer's HR manager testified that she asked N. in his interview if the resident had punched or physically assaulted him during the December 2024 incident, and N. said the resident had not done so, and had only yelled at him. Transcript at 31-32. Claimant asserted that N. had a motive to not be forthcoming to the HR manager because he "was afraid of losing his housing situation" with the employer. Transcript at 33. However, the HR manager rebutted this, testifying that she and the employer's executive director "continuously reassured" N. that he be "empowered to be truthful" and that his answers would have "no reflection on his housing" with the employer. Transcript at 38. Given the conflicting evidence and that claimant bears the burden of proof in this case, claimant did not prove by a preponderance of the evidence that the resident hit or physically touched N. during the December 2024 incident. Therefore, the facts of this decision have been found in accordance with the employer's account on this point.

Claimant failed to meet his burden to prove that he quit work with good cause. The resident's conduct during the December 2024 and January 19, 2024 incidents was concerning. However, a reasonable and prudent person would not have quit work when claimant did because the employer failed to remove the resident from their facility. The employer was responsive when the December 2024 and January 19, 2024 incidents came to light, placing claimant on paid administrative leave for his safety and starting an investigation into the matter. Although claimant believed he gave a written report regarding the December 2024 incident to his manager, the employer had no report documenting the incident in their files and the HR manager did not learn of the incident until January 20, 2025. As such, the record shows that the employer took timely action once the incidents were brought to their attention.

Further, the responsive steps the employer took were meaningful. The employer determined that they would not remove the resident from the facility because the January 19, 2025 altercation was verbal only and there was no physical touching. However, the employer planned to deter the resident from involvement in any future altercations by taking corrective action short of removal from the facility, such as removing the resident from a committee on which he served. Though limited contact between claimant and the resident was unavoidable upon claimant's return, the employer intended to instruct the resident to leave the room if claimant was present, and to keep all communication between the two at a "need basis" only. Transcript at 37. It can be inferred that had the resident then failed to abide by the instruction the employer would have reassessed the situation.

Moreover, upon claimant's return to work, claimant was to have a modified schedule for a two-week period in which he would start each of his shifts at 11:00 a.m. and work with the employer's experienced day staff "100% of the time" and "never be alone." Transcript at 30. During this period, the employer planned to give claimant additional training relating to safety protocols, background on the populations the employer served, de-escalation strategies, and best practices for documenting incidents. After the two weeks ended, claimant's weekday shifts were to change to 3:00 p.m. to 8:00 p.m. to allow an "hour

overlap” with the employer’s day staff, and enable claimant a better opportunity to ask questions or express concerns. Transcript at 30.

The employer’s return-to-work strategy would have benefitted claimant by ensuring that any limited contact between claimant and the resident in the two weeks beginning January 27, 2025 would be in the presence of other employees. The training would have helped claimant by potentially enabling him to learn and use new de-escalation tools should future difficulties with the resident arise. The permanent one-hour overlap beginning after the two weeks ended would have provided claimant additional opportunities to ask questions of experienced employees. A reasonable and prudent person would not have stopped working for the employer without first availing themselves of the modified work schedule and training opportunities to see if they would prevent or significantly diminish the risk of future altercations with the resident.

Finally, the record fails to show that if claimant had continued working, he faced a significant risk of physical harm from the resident. While the resident was able-bodied, relatively young, and had once made a threatening comment about his combat training, claimant did not prove by a preponderance of the evidence that the resident had ever hit or physically touched another during either the December 2024 or January 19, 2025 incidents. Claimant had been able to de-escalate the situation in December 2024, and the deputy did not deem the resident’s conduct on January 19, 2025 to be significant enough to warrant arresting or charging the resident or to justify writing a report.

For the reasons outlined above, claimant did not prove that he quit work for a reason of such gravity that he had no reasonable alternative but to leave work when he did. Claimant therefore voluntarily left work without good cause, and is disqualified from receiving unemployment insurance benefits effective January 26, 2025.

DECISION: Order No. 25-UI-290098 is affirmed.

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

DATE of Service: June 6, 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

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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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Email: appealsboard@employ.oregon.gov

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