

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0298

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 10, 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 denied benefits from January 26, 2025, to January 24, 2026 (decision # L0009693122).¹ Claimant filed a timely request for hearing. On May 1, 2025, ALJ Murray conducted a hearing, and on May 2, 2025, issued Order No. 25-UI-291183, modifying decision # L0009693122 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective December 29, 2024. On May 18, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Catholic Community Services of Lane County employed claimant as a case manager from September 11, 2023, through December 20, 2025.

(2) Beginning shortly after the employer hired claimant, claimant noticed that one of her coworkers, "M," frequently pointed his cell phone toward her as though he was taking pictures or recording videos of her. On one occasion, claimant asked M why he did so and he responded that he was taking a picture of her for his personal journal. At the time, claimant and M worked in a small room together, with

¹ Decision # L0009693122 stated that claimant was denied benefits from January 26, 2025, to January 24, 2026. However, decision # L0009693122 should have stated that claimant was disqualified from receiving benefits until she earned four times her weekly benefit amount. *See* ORS 657.176.

claimant and M seated at desks side by side. To prevent M from taking her picture or video, claimant placed a panel between her desk and M's desk.

(3) M was a member of the employer's housing team, and he and claimant had the same manager. His work and claimant's work were "interconnected" because the clients claimant managed were frequently in need of housing, and tasks relating to housing placement were handled by M. Exhibit 2 at 2. Claimant was dissatisfied with M's work ethic, thought that he neglected his duties, and found that he often made errors that she had to correct, which made her job harder.

(4) At a later point in claimant's tenure, the employer moved their office to a new location. In the new location, claimant and M worked together, again in a small room, with M's desk positioned behind claimant's desk, such that it was not possible to use a panel to prevent M from taking pictures or videos of her. Another case manager worked in the space with them.

(5) Claimant found in the new location that M continued to point his cell phone toward her in a manner suggesting he was taking pictures or videos of her. Claimant confronted M and asked whether he was taking her picture, but M would laugh and say "no." Transcript at 10. On one occasion, the other case manager saw M taking a picture of claimant and stated to claimant, "He's going home with your picture and will masturbate tonight." Exhibit 2 at 1. On another occasion, claimant heard M and the other case worker laughing. Claimant asked what was going on, and the other case worker stated that M "was imagining [claimant] having sex with [her] husband while wearing nitrile gloves[.]" Exhibit 2 at 1. In the new location, claimant noticed that M would purposefully move his chair to block the exit of the shared room, requiring her to have to move his chair back each time she left the room. On one occasion, M overheard claimant conversing with management about an explicit picture a client had inappropriately sent to claimant. Afterward, M made a comment to claimant that "despite [her] age," she was "very youthful and desirable." Exhibit 2 at 3.

(6) Claimant did not consent to M taking pictures or videos of her and M's practice of photographing or recording her made her uncomfortable. The comments made to her by M and the other case manager made claimant feel "really upset and violated." Transcript at 10.

(7) In October 2024, claimant's team held a meeting and, during the meeting, claimant's manager noticed M using his phone to record a video of claimant. Thereafter, the manager met with M and told him to stop using his cell phone to record claimant. However, M continued to point his cell phone toward claimant as though he was taking pictures or videos of her.

(8) After the manager spoke to M in October 2024, claimant asked her manager many times to either relocate her or to relocate M, but no action was taken. Claimant also sent a report about the matter to the employer's human resources (HR) associate and requested a meeting to file a complaint against M. Exhibit 2 at 1. However, no action was taken by the HR associate at that time.

(9) After the manager observed M recording a video of claimant, the manager talked to the HR associate about the matter. The HR associate told the manager to speak with M and tell him to stop taking pictures or videos of claimant. The HR associate understood that the manager had spoken to M and further understood, inaccurately, that M's conduct of taking pictures or videos had stopped at that time.

(10) In December 2024, M arranged housing for a group of claimant's clients that claimant thought was unsuitable. Claimant identified alternative housing for the family, and raised the alternative housing she had found with M, but he insisted the clients move into the housing he had arranged. Claimant then changed the clients' housing application to the housing she had found. M discovered that claimant had changed the housing application, and complained to their manager. The manager was displeased with claimant for changing the housing application. Exhibit 2 at 4.

(11) On December 18, 2024, a meeting occurred between claimant, claimant's manager, and the HR associate. The purpose of the meeting was to discuss the employer's displeasure with claimant having changed the housing arrangements of her clients, along with some other performance issues. During the meeting, claimant raised M's conduct of using his phone to take pictures or videos of her, and the HR associate asked claimant to present her complaints about M to the HR associate in writing.

(12) On December 19, 2024, claimant and the HR associate met at claimant's request. In the meeting, claimant tendered a letter of resignation. Claimant's resignation letter advised of her intent to resign effective January 3, 2025, and to work through the notice period.

(13) That evening, December 19, 2024, claimant sent an email to the HR associate outlining her complaints about M. On December 20, 2024, claimant sent another email to the HR associate asking that the HR associate ignore her email outlining her complaints about M because claimant wanted to send more details later.

(14) After receiving claimant's resignation letter, the employer determined that they would end claimant's employment early and pay her through the effective date of her resignation. The employer decided to accelerate claimant's work separation because they assessed that she would be leaving work soon anyway and determined it would be more convenient "to move forward with [claimant's] role" without her so as to "figure out what [their] needs are going to be going forward." Transcript at 18.

(15) On December 20, 2024, the employer's director and HR associate met privately with claimant and informed her that the employer was "accepting her resignation" that day and would pay her for her accrued time off and the hours she would have worked through her resignation date. Transcript at 16. The employer then had claimant collect her belongings and leave the premises. Claimant never worked for the employer again.

(16) On January 2, 2025, claimant sent the HR associate an email with a more detailed account of her complaints about M.

CONCLUSIONS AND REASONS: The employer discharged claimant, but not for misconduct.

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 employer discharged claimant on December 20, 2024. The previous day, December 19, 2024, claimant gave the employer notice that she planned to quit work on January 3, 2025. However, the employer did not allow claimant to work through her notice period, instead advising that they were accepting her resignation and directing her to collect her belongings and leave the premises. Because claimant was willing to continue working for the employer until January 3, 2025, but was not allowed to do so by the employer, the work separation was a discharge that occurred on December 20, 2024.

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 December 20, 2024, after informing her that they were accepting her resignation that day and would pay her for her accrued time off and the hours she would have worked through her resignation date. The employer decided to accelerate claimant’s work separation because they assessed that she would be leaving work soon anyway and determined it would be more convenient “to move forward with [claimant’s] role” without her. Transcript at 18. Accordingly, the employer discharged claimant because doing so was convenient and consistent with their business needs, not due to a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of claimant, or a disregard of the employer’s interests. Claimant’s discharge therefore was not for misconduct under ORS 657.176(2)(a).

ORS 657.176(8). While the record shows that claimant was not discharged for misconduct, it is necessary to determine whether 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.”

Here, claimant notified the employer on December 19, 2024, that she would quit work on January 3, 2025. The employer discharged claimant, but not for misconduct, on December 20, 2024. The December 20, 2024, discharge was within 15 days of claimant’s January 3, 2025, planned quit date. Therefore, the applicability of ORS 657.176(8) turns on whether claimant’s planned quit on January 3, 2025, was without good cause.

“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.

The order under review concluded that claimant voluntarily quit work without good cause. Order No. 25-UI-291183 at 3. The record does not support that conclusion.

Claimant's voluntary leaving planned for January 3, 2025, was for a reason that constituted good cause. At hearing, claimant testified generally that her planned quit was due to "lack of communication, leadership, and unresolved concern[s]." Transcript at 5. The timing of claimant's resignation letter suggests that some aspect of the December 18, 2024, meeting, perhaps the employer's displeasure with claimant for having changed her clients' housing application, which the employer expressed to her at the meeting, may have been a reason for claimant's decision to plan to quit on January 3, 2025, since she tendered her resignation letter on December 19, 2024, the day after the meeting. In any event, claimant also testified that a reason she chose to resign effective January 3, 2025, was M's conduct of "videotaping" and "taking pictures of [her][.]" Transcript at 7. Claimant offered testimonial and documentary evidence detailing harassing treatment from M. Transcript at 7-11; Exhibit 2 at 1-4.

The record shows that M's treatment of claimant placed her in a grave situation and that she pursued reasonable alternatives to no avail. Therefore, as M's treatment of claimant was one of the reasons for her planned quit, claimant established that her January 3, 2025, planned quit was for a reason that constituted good cause.

Claimant's situation was grave. The record supports that M used his cell phone to take pictures or videos of claimant, and told claimant that he did so for his personal journal. Claimant did not consent to M's practice of taking pictures or videos of her and M's conduct made her uncomfortable. M, in combination with the other case manager with whom the two shared a room, subjected claimant to multiple harassing and inappropriate comments. M told claimant that "despite [her] age," she was "very youthful and desirable." Exhibit 2 at 3. The other case manager, after seeing M take a picture of claimant, stated to claimant, "He's going home with your picture and will masturbate tonight." Exhibit 2 at 1. This individual also told claimant that M "was imagining [claimant] having sex with [her] husband while wearing nitrile gloves[.]" Exhibit 2 at 1. These comments made claimant feel "really upset and violated." Transcript at 10. In addition to taking claimant's picture or video without consent and subjecting claimant to harassing comments (in concert with the other case manager), M also deliberately moved his chair to block the exit of their shared room, requiring claimant to have to move his chair each time she left the room. Viewing these facts in combination, the record supports that M's practice of taking pictures or videos of claimant and his harassing treatment of her presented claimant with a grave situation.

Claimant pursued reasonable alternatives to leaving work without success. Claimant placed a panel between her desk and M's desk in an effort to prevent him from photographing or recording her. However, after the employer moved their office to the new location, claimant's desk was positioned differently so that it was not possible to use a panel to prevent M from taking pictures or videos of claimant.

Claimant asked the employer to address M's practice of taking pictures and videos of her, but those efforts were not successful. After the manager spoke to M in October 2024 and instructed him to stop photographing or recording claimant, M did not stop. Claimant asked her manager many times to either relocate her or to relocate M. However, no action was taken by the employer. Claimant also reported the matter to the employer's HR associate and requested a meeting to file a complaint against M. Exhibit 2 at 1. However, this request either did not reach the HR associate or reached her and was inadvertently ignored and then forgotten, because the HR associate testified that, although she would have "definitely tried . . . to look at" moving claimant if she had received a request, she had no recollection of receiving a request from claimant regarding M until the December 18, 2024, meeting. Transcript at 20, 26. No action was taken by the employer's HR office and the HR associate inaccurately believed that M had stopped taking pictures or videos of claimant after October 2024.

Thus, the record shows that claimant made persistent efforts to request that the employer address M's harassing treatment, and the employer was not responsive. Therefore, although the HR associate offered claimant an opportunity to present her complaints about M to her in writing during the December 18, 2024, meeting, and claimant eventually did so on January 2, 2025, after she no longer worked for the employer, claimant did not fail to pursue reasonable alternatives. Given that claimant had asked her manager numerous times to move M and had previously requested a meeting with HR with no effect, the weight of the evidence supports that making further efforts to ask the employer to address M's behavior would have been fruitless. Therefore, presenting her complaints about M to the HR associate in writing after the December 18, 2024, meeting but before her work separation would have been futile and not a reasonable alternative to leaving work.

For the foregoing reasons, claimant's planned quit on January 3, 2025, was with good cause. Therefore, because the employer discharged claimant, but not for misconduct, within 15 days prior to the date she planned to voluntarily leave work with good cause, ORS 657.176(8) does not apply to this case. Instead, this case is governed by ORS 657.176(2)(a) and, as discussed above, the record does not show that claimant's discharge was for misconduct under that provision. As such, claimant is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-291183 is set aside, as outlined above.

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

DATE of Service: June 20, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

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Email: appealsboard@employ.oregon.gov

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