

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0441

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 22, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective March 30, 2025 (decision # L0010922672).¹ Claimant filed a timely request for hearing. On July 10, 2025, ALJ Rackstraw conducted a hearing, and on July 14, 2025 issued Order No. 25-UI-297432, affirming decision # L0010922672. On July 18, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant’s written argument in reaching this decision.

FINDINGS OF FACT: (1) Locksmith Plus, Inc. employed claimant as a locksmith from June 1, 2023 through April 1, 2025. From August 2022 through May 31, 2023, claimant had worked for a “partner company” and “transferred over” to the employer’s business on June 1, 2023. Transcript at 69.

(2) At the start of claimant’s employment, he was paid commission only. After a few months, claimant negotiated for guaranteed minimum pay of \$6,500 per month plus ten percent of gross profits on work he performed. The employer’s other locksmiths were paid on a commission-only basis.

¹ Decision # L0010922672 stated that claimant was denied benefits from March 30, 2025 to April 4, 2026. However, decision # L0010922672 should have stated that claimant was disqualified from receiving benefits beginning March 30, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(3) By late 2024, the employer had become dissatisfied with some aspects of claimant's performance. While they remained satisfied with the quality of his work, they believed that he was refusing assigned service calls, working fewer days and hours, and generally "taking advantage" of the guaranteed minimum pay by working less. Transcript at 41.

(4) On March 25, 2025, the employer met with claimant to tell him that they would change his compensation structure effective April 1, 2025. Under the new structure, the guaranteed minimum pay would be eliminated and claimant would receive 30 percent of gross profits on work he performed, plus "monthly bonuses based on performance." Exhibit 1 at 2. The employer estimated at the time that if claimant accepted all service calls offered, he would earn, on average, approximately \$7,500 per month.

(5) Claimant understood the announced changes to his compensation and, in his estimation, based on the service calls he had been assigned over the previous few months, believed he would earn approximately half of what he had been earning under the guaranteed minimum structure. Claimant was therefore unwilling to continue working for the employer under the changed terms. Claimant did not attempt to negotiate these changes, and did not tell the employer that he was unwilling to agree to them.

(6) On April 1, 2025, claimant left the employer's vehicle he used to perform his work at the employer's premises, and failed to respond to service calls and inquiries from the employer as to why he had abandoned the vehicle and was not performing his assigned work. Claimant did not attempt to communicate with the employer or return to work thereafter, and the employer considered claimant to have abandoned his job that day. Claimant considered the employer to have discharged him on March 31, 2025 by changing his compensation structure, and believed that he was declining to accept a new offer of work by not reporting for work on April 1, 2025.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

Nature of the Work Separation. If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee was willing to continue to work for the same employer for an additional period of time but was not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). An individual is separated from work when the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The parties disputed the nature of the work separation. Claimant asserted that the employer told him at the March 25, 2025 meeting that he was being discharged on March 31, 2025, and offered a new position to begin on April 1, 2025, which he rejected. Transcript at 5. The employer denied having indicated to claimant that he was being discharged and was "shocked" when claimant failed to report for work on April 1, 2025 or communicate further with the employer. Transcript at 40. It is unnecessary to resolve whether the employer ever referred to the changes that would be effective April 1, 2025 as a discharge and subsequent offer of instantly-available new work, or something else, as the actions and intentions of the parties regarding maintaining the employment relationship, rather than their words alone, were determinative of when and how the work separation occurred.

Under the rule, a work separation does not occur based merely on a change in the terms of employment or an employee changing from one position to another; it occurs only upon severance of the employment *relationship*. Both parties agreed that the employer wanted the employment relationship to continue uninterrupted from March 31, 2025 through April 1, 2025 and beyond, albeit under different terms of employment effective April 1, 2025. Claimant was unwilling to accept this change in employment terms, and therefore refused to work for the employer on and after April 1, 2025, despite continuing work being available to him. By this refusal to continue working for the employer, claimant severed the employment relationship. Accordingly, the work separation was a voluntary leaving that occurred on April 1, 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) (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). 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.

A claimant who leaves work due to a reduction in pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.” OAR 471-030-0038(5)(d). However, an employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission. OAR 471-030-0038(5)(d)(B).

Claimant quit working for the employer because the employer changed the terms of his compensation effective April 1, 2025, and claimant was unwilling to accept the changed terms. Prior to April 1, 2025, the parties had agreed that claimant would be paid \$6,500 per month plus ten percent of gross profits on the work he performed. Though both parties referred to the \$6,500 as claimant’s “salary” during the hearing, it is more accurately referred to as guaranteed minimum earnings, given that claimant’s overall compensation for any month depended on the gross profits derived from his work, but would not be less than that amount. *See, e.g.*, Transcript at 7, 47. The change in compensation effective April 1, 2025 was that claimant would be paid 30 percent of gross profit from his work, with a potential to earn bonuses. Effectively, the change amounted to an increase in the commission rate and elimination of guaranteed minimum earnings. Under OAR 471-030-0038(5)(d)(B), this did not constitute a reduction in pay for purposes of that rule, and the standard good cause analysis set forth in OAR 471-030-0038(4) therefore applies.

The parties gave differing projections of how the changed compensation structure would affect claimant’s earnings. The employer asserted that claimant had consistently been offered work with a potential gross profit to the employer of \$25,000 to \$30,000 per month throughout his employment, which was expected to continue; and that until late 2024, claimant generated profits within that range.

Transcript at 40, 48-49. However, the employer contended that by late 2024, claimant began missing work and ignoring or refusing service calls, such that he was generating 65 to 70 percent of that gross profit despite the volume of service calls offered to him remaining unchanged. Transcript at 39-41. The employer therefore projected that if claimant resumed his previous levels of productivity by accepting all service calls offered, he could consistently generate at least \$25,000 in gross profit per month for the employer, earning at least \$7,500 per month under the new commission structure. Transcript at 39-40.

In contrast, claimant projected that he would earn “significantly less than half” of what he had earned prior to the change if he continued to work the same number of hours he had throughout his employment. Transcript at 23. Claimant based this projection on “the work that had been assigned to [him]. . . from around November [2024] or so” through the date the change was announced. Transcript at 23. Claimant generally denied having diminished productivity in the final months of his employment through missing work or ignoring or refusing service calls, and attributed declines in profit from his work during this period to general business conditions and lack of work offered by the employer. Transcript at 24-25.

The evidence supporting claimant’s projection is, at best, equally balanced with that supporting the employer’s projection. Claimant bears the burden of proof and, because the evidence is equally balanced, he has not met that burden with respect to his projection. Therefore, claimant has not shown that, had he achieved productivity levels typical for most of his employment, he lacked the ability to earn approximately as much, or more, under the changed compensation structure than he had under the old structure. As such, claimant has not demonstrated that he faced a grave situation under the changed compensation structure. Moreover, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work without first engaging in a trial period under the new structure to verify the accuracy of the earnings projections and, if the employer’s projection were proven inaccurate, to use that as a basis to negotiate a more favorable structure. Because claimant did not face a situation of such gravity that he had no reasonable alternative to leave work, he quit without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving benefits effective March 30, 2025.

DECISION: Order No. 25-UI-297432 is affirmed.

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

DATE of Service: August 22, 2025

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals **within 30 days of the date of service stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判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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