EO: Intrastate
BYE: 04-Apr-2026

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

863
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0533

Reversed & Remanded

PROCEDURAL HISTORY: On July 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause, and therefore was disqualified from receiving unemployment insurance benefits effective May 11, 2025 (decision # L0011859964). Claimant filed a timely request for hearing. On August 26, 2025, ALJ Griffith conducted a hearing at which the employer failed to appear, and on September 2, 2025, issued Order No. 25-UI-302030, affirming decision # L0011859964. On September 10, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed a written argument, in the form of a July 21, 2025 letter from his primary care provider. Claimant did not state that he provided a copy of his 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 them 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).

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Columbia Forest Products, Inc. employed claimant as a forklift driver from March 16, 2016 through May 15, 2025.

(2) For some time prior to his separation from work, claimant suffered from an enlarged prostate which resulted in difficulty urinating.

(3) In February 2025, the employer directed claimant to submit to a urinalysis test to screen for drugs. Due to his enlarged prostate, claimant was initially unable to produce a sample. Claimant was given more time, and was eventually able to produce a sample as directed.

(4) On May 14, 2025, claimant's supervisor directed claimant, who was on the way out of the bathroom, to submit for urinalysis. Claimant told his supervisor that he was concerned he would not be able to produce a sample, as he had just urinated, but the supervisor required him to do so. Claimant was allowed to drink some water and was given three hours to produce a sample, but was still unable to produce a sample in that time. As such, the employer suspended claimant for the day, and told him to return to work for a meeting with the human resources department (HR) on the following day.

(5) On May 15, 2025, claimant met with HR. In the meeting, the HR representative told claimant that he could continue working for the employer provided that he agreed to submit to regular monthly drug tests, as well as drug tests for which he was randomly chosen and that if he failed to produce a sample for any of these tests he would be discharged immediately. Claimant, believing that his difficulty in urinating would again prevent him from producing a sample when required, told the HR representative, "Go ahead and terminate me because I don't accept that." Audio Record at 12:10. In response, the HR representative said, "That's it. You can leave." Audio Record at 12:34. Claimant did so, and did not work for the employer thereafter.

CONCLUSIONS AND REASONS: Order No. 25-UI-302030 is set aside and this matter remanded for further development of the record.

Nature of the Work Separation. A work separation occurs when a claimant or employer ends the employer-employee relationship.

If claimant could have continued to work for the employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If claimant was willing to continue working for the employer for an additional period of time, but the employer did not allow claimant to do so, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, claimant asserted that he believed that the employer had discharged him. Audio Record at 4:57. Despite this, the record shows that claimant voluntarily quit. On May 15, 2025, claimant met with an HR representative, who told him that he would be allowed to continue working if he agreed to a drug-testing regimen for the following two years. Because claimant believed that he would not be able to comply with these terms, he told the employer, "[g]o ahead and terminate me because I don't accept that." Claimant's instruction for the employer to "terminate" him does not mean that he was actually terminated, however. The fact that the employer offered him terms under which he could continue working shows that the employer was willing to allow him to continue working for an additional period of time. By contrast, claimant's refusal to accept those terms shows that he was not willing to continue working for the employer under the conditions the employer set for him. Therefore, the work separation was a voluntary leaving.

Voluntary Quit. 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 Depart.,* 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 Depart.*, 348 Or 605, 612, 236 P3d 722 (2010).

Under ORS 657.176(10), an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work[]:

> (a) Because the employer has or introduces a reasonable written cannabis-free or drug-free workplace policy that is consistent with subsection (9)(a)(A) of [ORS 657.176];
>
> (b) Because the employer requires the employee to consent to present or future drug, cannabis or alcohol tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of [ORS 657.176];
>
> (c) To avoid taking a drug, cannabis or alcohol test under a reasonable written policy that is consistent with subsection (9)(a)(A) of [ORS 657.176]; or
>
> (d) To avoid meeting the requirements of a last chance agreement.

ORS 657.176(13) states, in relevant part:

> (d) "Last chance agreement" means a reasonable agreement:
>
> > (A) Between an employer and an employee who has violated the employer's reasonable written policy, has engaged in drug, cannabis or alcohol use connected with work or has admitted to alcohol abuse, cannabis abuse or unlawful drug use; and
> >
> > (B) That permits the employee to return to work under conditions that may require the employee to:
> >
> > > (i) Abstain from alcohol use, cannabis use and unlawful drug use; and
> > >
> > > (ii) Attend and comply with the requirements of a rehabilitation or education program acceptable to the employer.

OAR 471-030-0125 (January 11, 2018) states, in relevant part:

* * *

(3) For purposes of ORS 657.176(9), (10), and 657.176(13), a written employer policy is reasonable if:

> (a) The policy prohibits the use, sale, possession, or effects of drugs, cannabis, or alcohol in the workplace; and
>
> (b) The policy does not require the employee to pay for any portion of the test; and

(c) The policy has been published and communicated to the individual or provided to the individual in writing; and

(d) When the policy provides for drug, cannabis, or alcohol testing, the employer has:

(A) Probable cause for requiring the individual to submit to the test; or

(B) The policy provides for random, blanket or periodic testing.

* * *

(5) Random, blanket and periodic testing. For purposes of ORS 657.176(9) and (10):

(a) A "random test for drugs, cannabis, or alcohol, or a combination thereof" means a test for drugs, cannabis, or alcohol, or a combination thereof given to a sample drawn from a population in which each member of the population has an equal chance to be selected for testing.

(b) A "periodic test for drugs, cannabis, or alcohol, or a combination thereof" means a drug, cannabis, or alcohol test or a combination thereof administered at prescribed intervals.

(c) A "blanket test for drugs, cannabis, or alcohol, or a combination thereof" means a test for drugs, cannabis, or alcohol, or a combination thereof applied uniformly to a specified group or class of employees.

(6) For purposes of ORS 657.176(9), (10), and (13), no employer policy is reasonable if the employer does not follow their own policy.

(7) For purposes of ORS 657.176(13), a reasonable agreement is a document signed by the employee as a condition of continued employment and:

(a) The agreement may require the employee to submit to drug, cannabis, or alcohol testing;

(b) The agreement may not require the employee to pay for the test; and

(c) The agreement may not require them to attend a rehabilitation program that causes a hardship to the individual.

* * *

Claimant voluntarily quit work because he believed that, due to his enlarged prostate and resultant difficulty in urinating, he would be unable to comply with the terms of the drug-testing regimen that the employer required as a condition of continuing employment. The order under review concluded that this did not constitute good cause for quitting, explaining that claimant failed to seek reasonable alternatives to quitting such as requesting a medical accommodation. Order No. 25-UI-302030 at 3. However, the record as developed is insufficient to determine whether claimant should be disqualified from benefits

based on his work separation because the record suggests that the Department's drug, cannabis, and alcohol adjudication policy may apply to this work separation.

If the employer maintained a written policy regarding the use, sale, or possession of drugs, cannabis, or alcohol in the workplace, and claimant voluntarily quit work in relation to the operation of that policy, the work separation may be governed by the Department's drug, cannabis, and alcohol adjudication policy rather than the provisions of OAR 471-030-0038. Conversely, if the employer did *not* maintain such a policy, OAR 471-030-0038 is likely to govern the work separation.

As a preliminary matter, the notice of hearing in this case indicated only that the substantive issue to decide at hearing was, "Shall claimant be disqualified from the receipt of benefits because of a separation, discharge, suspension or voluntary leaving from work? (ORS 657.176, ORS 657.190 and OAR 471-030-0038.)" August 11, 2025 Notice of Hearing at 1. On remand, the Office of Administrative Hearings (OAH) should include in the notice of hearing that the issues to be considered include whether claimant should be disqualified from benefits due to a disqualifying act under the Department's drug, cannabis, and alcohol policy.

At the remand hearing itself, the ALJ should first inquire as to whether the employer maintained a written policy regarding the use, sale, or possession of drugs, cannabis, or alcohol in the workplace. As explained above, this is a threshold question that will likely determine whether the analysis in this matter should be based on the Department's drug, cannabis, and alcohol policy provisions, or on OAR 471-030-0038.

If the record shows that the employer *did* maintain a policy, inquiry should be made as to what the policy required, including the types of testing (such as random or periodic) permitted under the policy, the specific reason that the employer ordered claimant to take a test on May 14, 2025, whether the employer followed the policy, and whether the policy was reasonable. The record should also be developed to determine whether the options that the HR representative presented to claimant on May 15, 2025 constituted a "last chance agreement" under ORS 657.176(13)(d) and, if so, whether that agreement was reasonable under OAR 471-030-0125(7).

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division,* 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant should be disqualified from benefits based on having voluntarily quit, Order No. 25-UI-302030 is reversed and this matter remanded to OAH for another hearing and order.

DECISION: Order No. 25-UI-302030 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: <u>October 9, 2025</u>

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-302030 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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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