EO: Intrastate
BYE: 16-May-2026

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

574
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0541

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 16, 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 April 13, 2025 (decision # L0011996115).[1] Claimant filed a timely request for hearing. On August 22, 2025, ALJ Murray conducted a hearing, and on August 28, 2025 issued Order No. 25-UI-301804, reversing decision # L0011996115 by concluding that claimant did not separate from work under circumstances that disqualified him from receiving benefits. On September 16, 2025, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Levy Premium Foodservice Limited Partnership employed claimant as a culinary specialist from October 16, 2023 through April 17, 2025.[2] Claimant primarily performed his work at Portland Trail Blazers basketball home games. Their season typically lasted from October to April of the following year.

(2) On March 17, 2025, claimant was injured while working, and due to this injury called out sick for each of his remaining shifts of the basketball season, which ended on April 13, 2025.

(3) Near the end of March each year, the employer sent a form to their employees who primarily worked during basketball games. The form required that the employee select one of three options regarding their continued employment: (1) Agree to work through the offseason during other events at the venue where

[1] Decision # L0011996115 stated that claimant was denied benefits from May 18, 2025 to May 16, 2026. However, as decision # L0011996115 found that claimant quit work on April 17, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 13, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

[2] The parties gave conflicting testimony regarding claimant's dates of employment. As the employer's witness gave her testimony based on personnel records kept in the ordinary course of business, and claimant expressed doubts as to the accuracy of the dates he provided, this fact has been found in accordance with the employer's testimony.

the basketball games were held and return to working during basketball games when the season resumed in October; (2) Agree to work at another local event venue operated by the employer during the offseason, or be put on a waiting list to do so, and return to working during basketball games when the season resumed in October; or (3) "Pursue other interests" during the offseason, in which case their employment would "be terminated" after the last basketball game of the season, and the employee would have to reapply for their job in the fall if they wanted to work during the next basketball season. Audio Record at 13:15, 24:09.

(4) On March 30, 2025, claimant completed the form and returned it to his supervisor after selecting the "pursue other interests" option. Either with the completed form or later that day, claimant sent an email to his supervisor stating that he was "not retiring," and asking that the employer to "keep [him] onboard." Audio Record at 9:24.[3] Claimant did not receive a response to the email.

(5) On April 14, 2025, claimant emailed his supervisor again, requesting a telephone call to discuss his employment and the "difficult" season he had experienced. Audio Record at 17:50. The supervisor unsuccessfully attempted to reach claimant by phone. Claimant was unaware of any attempt to reach him.

(6) On April 17, 2025, the employer terminated claimant's employment because he indicated in his March 30, 2025 form response that he would not agree to work, or be placed on a waitlist for work, during the offseason. The employer did not notify claimant of his discharge, and claimant believed that he remained employed and would resume working in October 2025 at the start of the next basketball season. Claimant learned of the work separation when he received decision # L0011996115.

CONCLUSIONS AND REASONS: Claimant was discharged, but not for misconduct.

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

If the 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 the 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).

The order under review concluded that although no employment relationship existed after April 17, 2025, neither a discharge nor a voluntary leaving had occurred, and claimant therefore was not disqualified from receiving benefits based on a work separation. Order No. 25-UI-301804 at 3. This conclusion is inconsistent with OAR 471-030-0038, which provides that a work separation occurs on "the date the employer-employee relationship is severed," and that a work separation is necessarily either a voluntary leaving or discharge. OAR 471-030-0038(1)(a); *See* OAR 471-030-0038(2).

As of March 30, 2025, the employer was willing to continue employing claimant indefinitely, but only if he agreed to work, or be placed on a waiting list for work, through the basketball offseason. At that same

[3] Claimant testified that he sent the email in response to an email he received that asked if he was going to retire, but it is unclear from the record whether claimant was referring to the form or to a different email. Audio Record at 9:24.

time, claimant wanted to maintain the employment relationship indefinitely and return to work in October 2025 at the start of the next basketball season, but did not agree to work during the offseason on a form he submitted to the employer that day. Claimant also wrote to his supervisor at or near the time he submitted the form, stating that he was "not retiring," and sent another email requesting to discuss his employment by telephone on April 14, 2025, the day after the basketball season ended. The employer considered claimant's employment to have ended on April 17, 2025, because he did not agree to work during the offseason on the form he had submitted on March 30, 2025.

In considering this evidence, it is more likely than not that as of April 17, 2025, claimant was willing to maintain the employment relationship indefinitely, despite his intent not to perform work during the offseason. The employer was unwilling to maintain the employment relationship through the offseason because claimant did not agree to work during that period. Therefore, the work separation was a discharge that occurred on April 17, 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). "'[W]antonly negligent' means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c). 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 because he indicated in his March 30, 2025 form response that he did not agree to work during the basketball offseason. It can reasonably be inferred from the form's limited options that the employer expected their employees who worked primarily during basketball season to also work during the offseason, or agree to be put on a waitlist for such work, because the only alternative option listed on the form was to be discharged at the end of the basketball season. Claimant violated the employer's expectation by not agreeing on the form to work or be waitlisted for work during the offseason.

The record shows that claimant consistently wanted to maintain the employment relationship through the offseason to continue working at the start of the next basketball season, and did not intend to indicate otherwise to the employer. Claimant did not rebut the employer's testimony that he selected the "pursue other interests" option on the form, or that the form stated that selecting the option would result in being "terminated" at the end of the season. However, he testified that at or just after the time he returned the form, he emailed his supervisor that he was "not retiring" and asking to be kept "onboard." Audio Record at 9:24. The employer's witness testified that claimant's supervisor did not mention to her having received such an email, but that is insufficient evidence to rebut claimant's testimony that he sent it. Audio Record at 19:32. It is reasonable to infer from the timing of the email that claimant was attempting to clarify that he did not intend his selection on the form to convey a desire to end his employment, and that he was seeking an alternative to the options on the form to maintain the employment relationship while not working during the offseason.

Claimant's absence from work for the remaining two weeks of the season following submission of the form likely prevented him from further discussing the matter with his supervisor in person, and he therefore sent an email on April 14, 2025, the day after the last basketball game of the season, requesting a telephone call to discuss his employment. The employer's witness testified the supervisor told her that in response to that email the supervisor attempted, unsuccessfully, to contact claimant between April 14 and 17, 2025, and that on the latter date they discharged claimant based on his "pursue other interests" selection on the form. Audio Record at 16:20. Claimant denied being aware of any attempt by the supervisor to contact him during that period. Audio Record at 26:06. In the absence of a response to his March 30 and April 14, 2025 emails, or any other communication from the employer, claimant believed that he remained employed and would resume work at the start of the next basketball season in October 2025.

It is unclear from the record why claimant did not select one of the options on the form expressing agreement to work during the offseason. However, the timing of claimant's injury and resulting absence from work during and after the time he returned the form suggests that his ability to work may have been a factor in this selection.[4] Claimant also implied at hearing that he interpreted the form's use of the term "pursue other interests" as actually offering him the ability to do so without consequence to his employment, rather than understanding it as a euphemism for being discharged. Audio Record at 22:35. Claimant, at the time he returned the form and again at the end of the season, attempted to clarify his intent to remain employed through the offseason while not performing work, demonstrating that he was not indifferent to the consequences of how he completed the form, or of the employer's interests generally. At and after the time claimant made the selection on the form, claimant attempted to seek a mutually acceptable alternative to the form's limited options that would maintain the employment relationship, but was unsuccessful in trying to discuss the matter with his supervisor while recovering from his injury during the final two weeks of the season. Under these circumstances, the employer has not shown that claimant willfully or with wanton negligence violated their expectation that he agree to work during the offseason through his form response. Accordingly, claimant was not discharged for misconduct.

For these reasons, claimant was discharged, but not for misconduct, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 25-UI-301804 is affirmed.

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

DATE of Service: <u>October 10, 2025</u>

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

[4] OAR 471-030-0038(3)(b) provides that absences due to illness or other physical or mental disabilities are not misconduct.

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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