EO: Intrastate
BYE: 05-Apr-2025

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

304
MC 000.00
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0576

Modified
Request to Reopen Allowed
Disqualification

PROCEDURAL HISTORY: On March 21, 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 February 23, 2025 (decision # L0009888553).[1] Claimant filed a timely request for hearing. On June 18, 2025, notice was mailed to the parties that a hearing was scheduled for June 30, 2025. On June 30, 2025, claimant failed to appear at the hearing, and ALJ Murdock issued Order No. 25-UI-296303, dismissing claimant's request for hearing due to her failure to appear. On July 16, 2025, claimant filed a timely request to reopen the hearing. On September 2, 2025, ALJ Parnell conducted a hearing at which the employer failed to appear, and on September 9, 2025 issued Order No. 25-UI-302860, allowing claimant's request to reopen the June 30, 2025 hearing, and reversing decision # L0009888553 by concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the discharge.[2] On September 29, 2025, the employer filed an application for review of Order No. 25-UI-302860 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their September 29, 2025 argument to claimant 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 the employer's reasonable control prevented them from appearing at the hearing and offering the information at that time, 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).

[1] Decision # L0009888553 stated that claimant was denied benefits from February 23, 2025 to April 5, 2025. However, decision # L0009888553 should have stated that claimant was disqualified from receiving benefits beginning February 23, 2025, and until she earned four times her weekly benefit amount. *See* ORS 657.176.

[2] All citations in this decision to the audio record refer to the September 2, 2025 hearing.

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-302860 allowing claimant's request to reopen the June 30, 2025 hearing. That part of Order No. 25-UI-302860 is **adopted.** *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Vim and Vigor Clinic, LLC employed claimant as an office manager from November 8, 2024 through February 24, 2025. Claimant was the only employee of the business other than the owner.

(2) When claimant was hired, the parties agreed that she would be paid $30 per hour and that she could expect to be offered 36-40 hours of work per week during the clinic's operating hours, which were 9:00 a.m. to 6:00 p.m. on Monday, Tuesday, Thursday, and Friday. The agreement also provided that a "Health Insurance option" would be made available to claimant, and that after three months of employment she would receive a raise of $2 per hour. Exhibit 1 at 13.[3]

(3) At times between claimant's hire and February 6, 2025, the employer's owner repeatedly hugged claimant and engaged her in conversations on sexual topics. Although this conduct was unwelcome, claimant was hesitant to address it with the owner directly for fear of retaliation. On February 6, 2025, during such a conversation, claimant told the owner that she had not wanted him to hug her, which surprised the owner. Thereafter, the owner did not hug claimant or attempt to engage her in inappropriate conversations, and claimant felt that his demeanor toward her was "cold." Audio Record at 33:47.

(4) February 14, 2025 was a regularly scheduled payday for claimant, but she did not receive a paycheck that day. On February 17, 2025, claimant spoke with the owner about the missing paycheck, and he said that he "didn't have the money." Audio Record at 17:42.

(5) On February 20, 2025, the owner met with claimant to announce changes to the terms of her employment. The changes included modifying the clinic's hours to 9:00 a.m. to 5:00 p.m., Monday through Friday, though claimant could continue her current work schedule including having unpaid time off on Wednesdays if she so desired; reducing claimant's pay from $32 to $30 per hour; and offering no health insurance. These changes and other employment terms were set forth in a written agreement that claimant was given that day and asked to sign. Other potential changes discussed at the time, though not necessarily included in the written agreement, included the possibility of another doctor joining the clinic, which claimant felt would double her workload, and claimant conducting "injectables training," which claimant felt she should not perform without being licensed as a healthcare professional, though she did not discuss with the owner what the training would entail. Audio Record at 25:30.

(6) On February 21, 2025, an Occupational Health and Safety Administration (OSHA) consultant gave recommendations regarding the business to claimant and the owner, including that claimant be offered a hepatitis-B vaccine due to the potential for exposure to blood in the clinic, and that workers' compensation coverage should be obtained for claimant.

[3] Exhibit 1 consists of 19 pages, although only the first 6 pages contain the "Exhibit 1" marking.

(7) On February 24, 2025, claimant submitted a written response to the changes the owner had imposed on February 20, 2025. Claimant wrote that she was unwilling to accept the new terms of employment, and if the owner was unwilling to negotiate them, he should consider this her resignation. However, claimant also wrote that she was willing to continue working until the owner hired a replacement, but only under the pre-February 20, 2025 terms of employment. The owner responded by accepting claimant's resignation with immediate effect, and claimant did not work for the employer again after February 24, 2025.

CONCLUSIONS AND REASONS: Claimant quit work without good cause.

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).

On February 20, 2025, the employer notified claimant of changes to the terms of her employment, with those changes affecting her compensation presented in a written agreement that she was expected to sign. Claimant was unwilling to accept the new terms, and on February 24, 2025, stated as much in a resignation letter that included offers to negotiate the terms, or to continue working until a replacement was hired, but only under the old terms of employment. The employer rejected claimant's offers and accepted her resignation with immediate effect.

The order under review concluded that because claimant was willing to continue working for an indeterminate notice period, albeit under terms that were not available to her, and the employer was unwilling to allow claimant to continue working under her proposed terms, the work separation was a discharge. Order No. 25-UI-302860 at 4. The record does not support the conclusion that claimant was discharged.

It is generally an employer's right to set or change at any time the terms of offered employment, including those affecting the rate of pay, working hours, or fringe benefits. An employee may either accept proposed changes by continuing to work after their effective date, or reject them by leaving work. Claimant assumed that the employer would discharge her if she continued working but refused to sign the document acknowledging and agreeing to the changed terms of employment. However, claimant's signature on the agreement was not legally necessary for the employer to impose the changes, and if she continued to report for work after the stated effective date of the changes, the employer would likely only be liable to compensate her under the new terms.

On February 24, 2025, claimant wrote to the employer stating that she was rejecting the change in terms and resigning for that reason if the employer would not negotiate them, thereby indicating an unwillingness to work under the terms of employment offered by the employer. Although claimant expressed willingness to work a notice period, the length of which she delegated to the employer to determine, it was conditioned on the employer agreeing to compensate her under the previous employment terms. The employer's decision to reject claimant's offer and deem her resignation to have

immediate effect did not alter the nature of the work separation as a voluntary leaving. *See Westrope v. Employment Dept*., 144 Or App 163, 925 P2d 587 (1996) (when claimant offered to remain at work as long as the employer needed or until the employer found a replacement, and the employer refused the offer and effectuated the separation immediately, the separation remained a voluntary leaving because through his offer, claimant delegated to the employer the right to choose the separation date). Accordingly, the work separation was a voluntary leaving that occurred on February 24, 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 Dept.*, 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 Dept.*, 348 Or 605, 612, 236 P3d 722 (2010).

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). That section further provides:

> (A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.
>
> (B) 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.
>
> (C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.
>
> (D) If the Employment Department cannot determine the median rate of pay, the provisions of OAR 471-030-0038(4) apply.

A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

Claimant quit working for the employer primarily because she was unwilling to accept changes to the terms of employment that had been presented to her on February 20, 2025. Claimant's testimony suggested that her decision to quit was also motivated to some degree by past "sexual harassment"; the owner's failure to timely pay wages on February 14, 2025; possible future changes to her workload, as discussed on February 20, 2025; and the results of an OSHA consultant's review presented on February 21, 2025. Audio Record at 15:00. These reasons, individually or in combination, did not amount to a grave situation at the time claimant quit work.

Claimant testified that during her employment through February 6, 2025, "Anytime I was standing up in [the owner's] proximity, he would come to hug me," which she would try to avoid by sitting down, and that he would sometimes hug her "from behind" while she sat at her desk. Audio Record at 15:49. During that period, claimant did not voice objection to being hugged for fear of retaliation. Claimant further testified that on February 6, 2025, the owner "asked [her] very inappropriate questions about [her] celibacy and whether or not [she] masturbate[s]." Audio Record at 15:20. In her response, claimant indicated that she did not "appreciate" the owner's hugs, and the owner appeared "offended and taken aback" by hearing this. Audio Record at 16:40. Claimant did not assert that after this conversation the owner engaged in any further unwelcome touching or inappropriate conversations, and testified the owner's "whole demeanor towards [her] changed after that conversation. He was cold." Audio Record at 33:47. The employer did not participate in the hearing, and therefore did not rebut claimant's testimony.

In considering this evidence, claimant faced a grave situation based on the owner's inappropriate conduct toward her, but only while that conduct was occurring. Once claimant made the owner aware that his conduct was unwelcome on February 6, 2025, he did not engage in it further. Claimant therefore did not face a grave situation on this basis at the time she quit work on February 24, 2025. Moreover, that claimant was willing to continue working for the employer beyond that date if the owner agreed to her proposed terms of compensation further shows that she no longer considered this situation grave when she quit.

On Friday, February 14, 2025, claimant expected to be paid her wages in accordance with the schedule in place since the start of her employment. Claimant testified that as of Monday, February 17, 2025, she had not received that paycheck, and that the owner told her that day that he "didn't have the money" to pay her. Audio Record at 17:42. Claimant did not provide additional evidence regarding whether or when the paycheck was ultimately issued to her, and therefore did not show by a preponderance of the evidence that her pay was more than one business day late. While an unfair labor practice, such as a failure to timely pay wages, can constitute a grave situation, that is not necessarily the case where the unfair practice is not ongoing. *Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim). It can be inferred that the announced changes to claimant's compensation on February 20, 2025 were made in an effort to resolve whatever financial issues led to the delay in claimant's pay on this occasion, and to reduce the chances of such a delay being repeated. Therefore, claimant has not shown that she faced a grave situation based on a single instance of a late payment of wages.

During a conversation with the owner on February 20, 2025, claimant learned that he was considering bringing another doctor into the practice, which to claimant meant that she would have to "manag[e] two workloads." Audio Record at 25:51. Claimant testified that during this conversation the owner also "ask[ed] [her] to conduct injectables training," which was "not something that [they had] ever discussed," or that claimant believed she was "licensed to do." Audio Record at 25:30. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work based merely on the initial discussion of these ideas, without learning whether they ultimately would be implemented or have the impacts that claimant feared. Similarly, claimant testified that on February 21, 2025, she and the owner were presented with the results of an OSHA consultant's review of the business, which mentioned that the employer should have offered claimant a hepatitis-B vaccine and

secured workers' compensation coverage for her at hire. However, claimant did not assert that the owner was previously aware of either requirement, or that he expressed an unwillingness to comply after learning of them that day. Claimant therefore did not face a grave situation at the time she quit based on any of these circumstances.

The record shows that the proximate cause of claimant's decision to quit work was the owner informing claimant, on February 20, 2025, that the terms of her employment were changing. One such change involved the clinic's operating hours, which since claimant was hired had been four days per week and nine hours per day. Under the changed schedule, the clinic would be open five days per week and eight hours per day. Claimant found this change unacceptable because she had other, unspecified obligations on Wednsedays, which was the weekday the clinic had been closed under the old schedule, and it would now be open that day. However, claimant testified that the owner stated he would still allow her to have Wednesdays off if she desired, but she complained that doing so would reduce her overall pay by 20 percent, presumably because she would be working only 80 percent of the 40-hour workweek. Audio Record at 27:25. As the employer was still offering claimant 40 hours of work per week during customary business hours, a reduction in hours did not occur, and OAR 471-030-0038(5)(e) is therefore inapplicable. Further, under the standard good cause analysis, this relatively minor change to the schedule, which continued to accommodate claimant's unavailability on Wednesdays, did not constitute a grave situation.

Another change involved the employer's provision of health insurance to claimant. The parties agreed at hire that a health insurance option would be provided to claimant, but the record does not contain the specifics of what this entailed, or when claimant would become eligible for that benefit. In the changes announced on February 20, 2025, the employer would not thereafter provide a health insurance option to claimant, but granted her access to some services provided by the clinic for free or at a discount.[4] Under OAR 471-030-0038(5)(d)(C), this loss or reduction of a fringe benefit is not considered a reduction in the rate of pay, and the standard good cause analysis applies. It is unclear from the record whether an offer of a specific health insurance policy had been made to claimant prior to February 20, 2025, and if so, whether claimant had accepted it or had ever planned to do so. On this evidence, claimant has not shown that the loss or reduction of this benefit would cause a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave work.

Finally, in the changes announced on February 20, 2025, the employer reduced claimant's pay from $32 to $30 per hour. Claimant's rate of pay at hire was $30 per hour, automatically increasing to $32 after three months of employment, which occurred on approximately February 9, 2025. The record does not contain information from the Department regarding the median pay in claimant's normal labor market area for office manager positions, and under OAR 471-030-0038(5)(d)(D), the standard good cause analysis therefore applies. While reductions in pay are understandably disfavored by employees, the reduction here amounted to a relatively small 6.25 percent of claimant's hourly wage, and had the effect of reversing a raise that had been in place for less than two weeks, returning her to the hourly wage she had been paid for most of her tenure. Under these circumstances, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work because of the pay reduction.

[4] The record suggests that the services offered by the clinic largely or exclusively involved elective treatments, rather than the range of services typically covered by health insurance.

Although for the reasons discussed herein claimant did not face a grave situation due to the changes in the terms of employment, claimant asserted at hearing that the changes were made in retaliation for having told the owner on February 6, 2025 that his inappropriate conduct toward her was unwelcome. Audio Record at 33:17. If so, such retaliation could constitute a grave situation. However, in considering the employer's stated inability to timely pay claimant wages due on February 14, 2025, it is at least as likely that the owner implemented these changes less than a week later out of financial necessity, as it is that they were made to retaliate against claimant. Therefore, claimant has not shown by a preponderance of the evidence that the employer engaged in unlawful retaliation against claimant for correcting the owner's inappropriate conduct.

For each of the stated reasons, claimant did not face a grave situation based on the factors, either individually or in combination, that caused her to quit work when she did. Accordingly, claimant quit work without good cause and is disqualified from receiving benefits effective February 23, 2025.

DECISION: Order No. 25-UI-302860 is modified, as outlined above.

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

DATE of Service: October 16, 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
Email: *appealsboard@employ.oregon.gov*
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