EO: Intrastate
BYE: 30-May-2026

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

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EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0752

Modified
Request to Reopen Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On July 22, 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 25, 2025 (decision # L0011976039).[1] Claimant filed a timely request for hearing. On August 19, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 26, 2025. On August 27, 2025, claimant failed to appear at the hearing, and ALJ Murray issued Order No. 25-UI-301627, dismissing claimant's request for hearing due to his failure to appear. On August 27, 2025, claimant filed a timely request to reopen the hearing.

On December 2, 2025, ALJ Murray conducted a hearing, and on December 4, 2025 issued Order No. 25-UI-312951, allowing claimant's request to reopen the hearing, and reversing decision # L0011976039 by concluding that neither party established the nature of the separation and therefore claimant was not disqualified from receiving benefits based on the work separation. On December 8, 2025, the employer filed an application for review of Order No. 25-UI-312951 with the Employment Appeals Board (EAB).

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-312951 allowing claimant's request to reopen the hearing. That part of Order No. 25-UI-312951 is **adopted.** *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Golden Brown Tree Service, LLC employed claimant, most recently as a climber and bucket operator and driver, from August 13, 2021 through approximately May 27, 2025.

[1] Decision # L0011976039 stated that claimant was denied benefits from May 25, 2025 to May 30, 2026. However, decision # L0011976039 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 25, 2025 and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(2) In or around early 2025, the employer issued claimant a write-up for "testing out an employee." Transcript at 13. On another occasion, the employer suspended claimant for a week because claimant refused to drive the employer's uninsured vehicles. Claimant felt that the employer's discipline on these occasions constituted "retaliation." Transcript at 13.

(3) On various occasions, claimant raised safety concerns with the owner of the business. The owner generally felt that his work safety practices were sufficient.

(4) On May 27, 2025, claimant, the owner, and other employees were working at a job site. At one point, the owner asked claimant to perform a task that claimant felt was unsafe. Claimant told the owner that he felt the task was unsafe, and that he "wanted to discuss a pay raise… [i]f he was required to unsafely climb [a] tree that was scheduled to do with an aerial lift." Transcript at 11. After claimant expressed this to the owner, the owner told him and the other employees to pack up their gear and return to the employer's shop.

(5) Claimant did as the owner instructed and returned to the shop. Claimant then left work and did not return to work again.

(6) The employer's pay period which included claimant's last shift ended on May 30, 2025. On June 2, 2025, which was the employer's standard pay date, the employer issued claimant his final paycheck.

CONCLUSIONS AND REASONS: Order No. 25-UI-312951 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). The date a claimant is separated from work is the date the employer or claimant ends the employer-employee relationship. OAR 471-030-0038(1)(a).

The nature of the work separation, as the record was developed, is ambiguous. Although the parties offered somewhat differing accounts of the incident which directly preceded claimant's exit from employment, they agreed on many details. In brief, claimant and the owner had a dispute about work that the owner directed claimant to perform, after which the owner directed claimant and other employees to leave the job site.

At hearing, claimant testified that after he returned to the office after the incident, "there was no discussion of a suspension. No verbal confirmation. [He] was only suspended. [Claimant] tried contacting [the owner] about [his] last check but [the owner] didn't answer [claimant]." Transcript at 11. Claimant further testified that he would have been willing to continue working for the employer if the employer had allowed him to do so, and that he never told the employer he was quitting. Transcript at 12–14. The owner likewise testified that he never told claimant that he was discharged, and that after

having not heard from claimant "for over three or four days," the owner's "automatic assumption was that [claimant] quit[.]" Transcript at 17.

The order under review, in weighing this evidence, concluded, "[n]either party established the nature of the separation by a preponderance of the evidence; rather, the weight of the evidence supports that the separation was based on a misunderstanding caused by miscommunication, in which each party believed the other had severed the employment relationship… As such, there is no basis to find a disqualifying separation[.]" Order No. 25-UI-312951 at 4. While it is correct that neither party established the nature of the work separation by a preponderance of the evidence as the record was developed, finding that the separation occurred but was neither a voluntary leaving or a discharge is a misapplication of OAR 471-030-0038(2). That portion of the rule provides for two types of work separations: a voluntary leaving and discharge. Likewise, ORS 657.176(2) only recognizes those two types of work separations and does not create a third type of work separation, such as mutual misunderstanding, as contemplated by the order under review. Because both the statute and the rule present these two types of work separations as binary choices, the finder of fact must develop the record to determine whether the nature of the work separation was a voluntary leaving or a discharge and adjudicate accordingly. The record as developed does not contain sufficient evidence to make this determination.

On remand, the ALJ should further develop the record to determine whether claimant voluntarily quit work or whether the employer discharged him. To that end, the ALJ should first inquire as to the specific details of the jobsite dispute that preceded the work separation. The ALJ is advised that eliciting more testimony on the nature of the work that the employer engages in, claimant's specific job duties, and details of the specific job on which claimant was working, preferably in terms understandable to laypersons not involved in that line of work, will likely offer a more complete picture of the events which led to the work separation. Additionally, the ALJ should inquire as to what the employer's typical practices were when assigning work, deciding to leave a jobsite early, how many other employees were on the job site on May 27, 2025, why he told all of the employees to go to the shop and not just claimant, and what those other employees did after leaving the jobsite that day, including whether they came to work the following work day. The record should be developed as to whether the other employees considered themselves discharged because they were sent away from the jobsite and whether the employer said or otherwise treated claimant differently than the other employees that day when he was instructed to leave the job site. The ALJ should also clarify whether claimant would have been allowed to return to work the following work day, or when claimant was next expected to work and how that was communicated to claimant. The ALJ should further clarify on what date, if at all, the owner came to believe that claimant had quit, what claimant meant when he testified that he "was only suspended," but also that there was "no discussion of a suspension," and when the employer typically prepared final paychecks after discharging employees.

The record also contains testimony from claimant's witness, a former employee of the employer's and an apparent relation of claimant's, which indicated that the witness "had the same situation done to [him]" as had happened to claimant. Transcript at 25. The ALJ excluded any further testimony on this point as irrelevant to claimant's own separation from work. However, further testimony regarding this witness's separation from work for the employer, if the circumstances which led to the separation are similar to claimant's, may hold *some* probative value in this matter for the ALJ to weigh, as it may show that the employer has acted similarly in dismissing other employees in the past. To that end, the ALJ

may permit this testimony to the extent it may show a pattern or habit, and the employer may also provide testimony to rebut the witness's testimony or credibility. Other disputes between the witness and the employer offering no probative value should be excluded from testimony. The ALJ should carefully weigh this testimony, and any rebuttal testimony from the employer on this point, as a party's previous acts are not irrefutable proof that they have acted the same in subsequent situations.

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 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).

To the extent that the record on remand shows that claimant voluntarily quit work, the ALJ should develop the record to determine why claimant quit work and whether claimant had good cause for quitting. In particular, the ALJ should develop the record to determine whether the employer had been directing claimant to engage in unsafe work practices, as claimant asserted. This should include a detailed inquiry into what the employer directed claimant to do on May 27, 2025, what the industry safety standard was for such tasks, why claimant felt that it was unsafe, and why the employer disagreed with claimant's assessment. The record should be further developed as to whether claimant was willing to continue to complete the assigned task if he was paid an additional sum of money and how claimant's pay impacted claimant's willingness to work in conditions claimant perceived to be unsafe. To the extent that the record on remand shows that the assigned task *was* unsafe or not in keeping with industry safety standards such that it created a grave situation, the ALJ should also inquire as to whether claimant had any reasonable alternatives to quitting work, including other instances in which claimant felt that he had been asked to perform unsafe work, how, if at all, he raised his concerns with the employer, what the employer's responses were in those instances, what other options, if any, claimant might have had available to him to report concerns of unsafe working conditions, and whether he had ever pursued those.

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).

Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b). To be isolated, an instance of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). However, acts that

violate the law, that are tantamount to unlawful conduct, or that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D).

The record shows that claimant essentially refused to perform work that the owner tasked him with, at least unless he was paid more. This suggests the employer may have discharged claimant for insubordination for refusing to work. The employer also testified, when asked if he had planned to discharge claimant, "Not if he'd have got [*sic*] back with me and talked to me. I ended up hiring a contract climber to do the job that he refused to do." Transcript at 17. This suggests that the employer may have discharged claimant because claimant failed to follow up with the owner after the incident on May 27, 2025. To the extent that the record on remand shows that the employer discharged claimant, the ALJ should develop the record to determine why the employer discharged him and whether the failure to continue working without a pay raise or the failure to follow up with the employer after the incident constituted a willful or wantonly negligent violation of the employer's expectations.

Further, if the record on remand shows that claimant was discharged for a willful or wantonly negligent violation of the employer's standards of behavior, the ALJ should develop the record regarding any prior potential willful or wantonly negligent violations of the employer's expectations, so as to determine whether claimant was discharged for an isolated instance of poor judgment. In particular, this should include inquiry regarding claimant's reports that he was disciplined for "testing out an employee," and that he was suspended for refusing to drive an uninsured vehicle.

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 determine the nature of the work separation, and whether the work separation was disqualifying, Order No. 25-UI-312951 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 25-UI-312951 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>January 20, 2026</u>

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-312951 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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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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