

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0014**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 7, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant committed a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy by voluntarily leaving work to avoid taking a drug test, disqualifying claimant from receiving unemployment insurance benefits from September 14, 2025 to January 17, 2026 (decision # L0013364792).<sup>1</sup> Claimant filed a timely request for hearing. On December 5, 2025, the Office of Administrative Hearings (OAH) served notice on the parties of a hearing on decision # L0013364792 scheduled for December 18, 2025. However, the hearing notice inaccurately listed the issue to be decided as whether claimant voluntarily left work without good cause, rather than the appropriate issue of whether claimant committed a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy.

On December 18, 2025, ALJ Parnell conducted a hearing at which the employer failed to appear, adjudicating the work separation as though the issue was whether claimant voluntarily left work without good cause, rather than whether claimant committed a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy. On December 22, 2025, ALJ Parnell issued Order No. 25-UI-315080, modifying decision # L0013364792 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective June 1, 2025. On December 29, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the administrative decision and notice of hearing in this matter, which have respectively been marked as EAB Exhibit 1 and EAB Exhibit 2, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within

<sup>1</sup> Decision # L0013364792 stated that claimant was denied benefits from September 14, 2025 to January 17, 2026. However, as decision # L0013364792 concluded that the disqualifying act occurred on June 3, 2025, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 1, 2025, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibits will remain in the record.

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument because he 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 parties may offer new information into evidence at the remand hearing. Such information may include, if it exists, the employer's written policy prohibiting the use, sale, possession, and effects of drugs, cannabis or alcohol in the workplace. Such information may also include evidence that claimant participated in a drug rehabilitation program within ten days after the date of the work separation, as well as any evidence claimant has provided documentation to the Department of such participation via a signed statement by an authorized representative of the program in which claimant participated.<sup>2</sup> At the time of the hearing, 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) JH Kelly, LLC employed claimant as a fabricator from 2024 until June 3, 2025. Claimant was a member of a union.

(2) Claimant had a substance use disorder and had been in sober recovery for many years. At some point shortly before May 30, 2025, claimant relapsed and began to use controlled substances again.

(3) On May 30, 2025, claimant told his supervisor that he had relapsed, was concerned it could start affecting safety and work performance, and that he was trying to figure out what to do to stop using. Claimant's supervisor responded, "Why are you telling me this?" Audio Record at 8:49. Claimant responded that he thought disclosure was the right thing to do and asked the supervisor, "What do we do from here?" Audio Record at 14:38. The supervisor stated that he did not know.

(4) On June 3, 2025, claimant was working a shift. That day, claimant's supervisor called claimant to his office and presented claimant with a choice: either submit to a urine analysis (UA) test or quit working for the employer.

(5) Claimant asked the supervisor what the consequences might be of choosing one option or the other. The supervisor said he did not know. He also said that if claimant submitted to the UA test and the results were positive, he did not know whether the employer would terminate claimant's employment, but would "have to figure that out . . . if that happens." Audio Record at 17:11. As the conversation progressed, claimant felt the supervisor wanted him to quit working for the employer. Claimant chose the option of quitting work and resigned that day. Claimant later learned that by quitting, he lost the ability to assert certain union protections. In hindsight, claimant concluded that he would have submitted to the UA test instead of quitting.

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<sup>2</sup> If claimant has not already done so, he may wish to provide a signed statement by an authorized representative of the rehabilitation program in which he participated to *the Department*.

(6) After claimant quit working for the employer, he entered a substance use treatment program. He completed the program and “was released as fit to work.” Audio Record at 21:10.

(7) After the work separation, claimant filed an initial claim for unemployment insurance benefits. On October 7, 2025, the Department issued decision # L0013364792, concluding that claimant committed a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy by voluntarily leaving work to avoid taking a drug test, and disqualifying claimant from receiving benefits. *See* EAB Exhibit 1 at 1.

(8) Claimant requested a hearing on the administrative decision. On December 5, 2025, OAH served notice on the parties of a hearing on decision # L0013364792 scheduled for December 18, 2025. However, the hearing notice inaccurately listed the issue to be decided as whether claimant voluntarily left work without good cause, rather than the appropriate issue of whether claimant was subject to disqualification from benefits under the provisions of the Department’s drug, cannabis, and alcohol adjudication policy. *See* EAB Exhibit 2 at 1. The notice’s “Laws and Rules” section omitted the laws and rules applicable to the Department’s drug, cannabis, and alcohol adjudication policy. *See, e.g.*, EAB Exhibit 2 at 12.

**CONCLUSIONS AND REASONS:** Order No. 25-UI-315080 is set aside, and this matter remanded for further proceedings consistent with this order.

**Nature of 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 work separation was a voluntary leaving that occurred on June 3, 2025. On that date, claimant was given the choice to either submit to a UA test, or to quit working for the employer. Claimant chose to quit working for the employer. Claimant later learned that by quitting, he lost the ability to assert certain union protections, and, in hindsight, would have submitted to the UA test instead of quitting. However, not knowing all the ramifications of quitting work does not change the nature of the separation from being a quit to a discharge. By choosing to quit rather than submit to the UA test, claimant showed that he was unwilling to continue working for the employer for an additional period of time, and the work separation therefore was a voluntary leaving that occurred on June 3, 2025.

**Voluntary Leaving to Avoid Taking a Drug Test.** ORS 657.176(2)(h) requires a disqualification from unemployment insurance benefits if the individual has committed a disqualifying act as described in ORS 657.176(8) or (9). ORS 657.176(9) provides, in pertinent part, that an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work:

\* \* \*

(c) To avoid taking a drug, cannabis or alcohol test under a reasonable written policy that is consistent with subsection (8)(a)(A) of this section[.]

\* \* \*

OAR 471-030-0125(3) (January 11, 2018) provides that for purposes of ORS 657.176(9), . . . 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.

\* \* \*

No employer policy is reasonable if the employer does not follow their own policy. OAR 471-030-0125(6). Subject to some exceptions, an individual is not considered to have committed a disqualifying act if the individual, on the date of separation, or within ten days after the date of the separation, is participating in a recognized drug, cannabis or alcohol rehabilitation program and provides documentation of the same to the Department. ORS 657.176(8)(b)(A).

Furthermore, OAR 471-030-0125(2)(i) provides the following definitions applicable to ORS 657.176(8)(b)(A):

(A) “Recognized drug, cannabis, or alcohol rehabilitation program” means a program authorized and licensed by the State of Oregon, or another state.

(B) “Documentation of participation in the program” means a signed statement by an authorized representative of the recognized program that the individual is or was participating in a treatment program.

(C) “Participation” means to be engaged in a course of treatment through a recognized drug, cannabis, or alcohol rehabilitation program.

The order under review analyzed claimant’s work separation under ORS 657.176(2)(c), which provides for disqualification from benefits if a claimant voluntarily leaves work without good cause. Order No. 25-UI-315080 at 2-3. The order under review erred in analyzing the separation under that section, rather

than ORS 657.176(9). Claimant's disqualification must be analyzed to assess whether claimant committed a disqualifying act under the Department's drug, cannabis, and alcohol adjudication policy by voluntarily leaving work to avoid taking a drug test, and whether claimant, on the date of separation, or within ten days after the date of the separation, participated in a recognized drug rehabilitation program and whether he has, at any time, provided documentation that he did so to the Department. The matter is therefore remanded for OAH to serve notice on the parties of that issue, for the ALJ to develop the record to assess the issue, and to render an order on it.

Review of the administrative decision in this matter shows that the Department premised claimant's disqualification from benefits on the assertion that he committed a disqualifying act under ORS 657.176(9)(c) by voluntarily leaving work to avoid taking a drug test. The decision references the provision by using the words from ORS 657.176(9)(c), stating, "you *quit work* because you you [sic] were *avoiding taking a drug test* for your employer." EAB Exhibit 1 at 1 (emphasis added). It then references ORS 657.176(2)(h) by referring to claimant's conduct as a "disqualifying act" and goes on to cite administrative rules, OAR 471-030-0125 and OAR 471-030-0126, that only apply in the context of the Department's drug, cannabis, and alcohol adjudication policy. *See* EAB Exhibit 1 at 1. Accordingly, the Department viewed claimant's work separation as a disqualifying act under ORS 657.176(2)(h), rather than a voluntary leaving without good cause under ORS 657.176(2)(c), and it is therefore appropriate to remand for a hearing where the issue to be decided is whether claimant is subject to disqualification from benefits under the provisions of the Department's drug, cannabis, and alcohol adjudication policy.

On remand, the ALJ should develop the record to assess whether the drug test claimant quit to avoid was to be administered under a written employer policy that was reasonable. To this end, the ALJ should ask questions to determine whether the employer had a written policy that prohibited the use, sale, possession, and effects of drugs, cannabis or alcohol in the workplace. If so, the ALJ should inquire whether such a written policy was provided to claimant in writing, or otherwise was published and communicated to claimant. The ALJ should also ask whether the policy required employees to pay for the required testing, whether the employer followed their own policy, and whether the policy called for drug testing that was random or based on probable cause.

Further, the ALJ should ask questions to determine whether ORS 657.176(8)(b)(A) applies to claimant's circumstances. At hearing, claimant testified, "Immediately after leaving [work], I contacted my union representative and entered formal treatment. I completed intensive outpatient treatment and was released as fit to work." Audio Record at 21:05. This evidence suggests the possibility that claimant participated in a recognized drug rehabilitation program within ten days after the date the separation occurred. The ALJ should ask questions to determine whether this was the case. The ALJ should ask questions tailored to the definitions of OAR 471-030-0125(2)(i), and inquire whether the treatment claimant received was a program authorized and licensed by the State of Oregon, or another state; whether claimant ever received a signed statement by an authorized representative of the program that he was participating in the treatment program; and whether claimant participated by being engaged in a course of treatment through the rehabilitation program. The ALJ should also inquire whether claimant has, at any time, provided documentation of participation in the program to the Department. If the record on remand shows that ORS 657.176(8)(b)(A) is applicable, claimant would not be considered to have committed a disqualifying act.

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 is subject to disqualification from benefits under the provisions of the Department's drug, cannabis, and alcohol adjudication policy, Order No. 25-UI-315080 is reversed and this matter remanded to OAH for another hearing and order.

**DECISION:** Order No. 25-UI-315080 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** February 6, 2026

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-315080 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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.