

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0291

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 31, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective April 20, 2025 (decision # L0013723034). Claimant filed a timely request for hearing. On March 11, 2026, ALJ Krueger conducted a hearing at which the employer failed to appear, and issued Order No. 26-UI-323229, modifying decision # L0013723034 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective April 6, 2025.¹ On March 24, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: 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 him 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).

FINDINGS OF FACT: (1) Indigo Event Marketing employed claimant from approximately January 6, 2025 through January 27, 2025.²

¹ Although Order No. 26-UI-323229 stated it affirmed decision # L0013723034, it modified that decision by changing the beginning date of the disqualification from April 20, 2025 to April 6, 2025. Order No. 26-UI-323229 at 3. Furthermore, while the order stated the disqualification date was April 5, 2025, this is likely a typographical error. Because the order concluded that the work separation occurred on April 10, 2025, the resulting disqualification must be effective the Sunday of that week, which was April 6, 2025.

² Claimant testified that the employer issued him a form 1099-NEC, rather than a W-2, reflecting their payments to him for the work performed. Audio Record at 9:06. This suggests that the employer did not consider him to be an employee. The Department's records show that it declined to further investigate whether this was, in fact, an employment relationship under the applicable criteria set forth in ORS chapters 670 and 657. However, the issuance of decision # L0013723034 is sufficient

(2) Claimant's job title with the employer was "field marketing ambassador," and when he was assigned work it was performed in increments of as few as three hours at various restaurants in the Nashville, Tennessee area. Audio Record at 4:36. Claimant used a website that aggregated "gigs and shifts" offered by five businesses in this field to search for and obtain these assignments, and the employer's shifts were among those claimant accepted through the website. Audio Record at 5:31.

(3) In January 2025, claimant was offered and accepted three hours of work from the employer in each of two weeks, and twelve hours in a third week. Claimant was last paid by the employer on January 27, 2025. For the majority of the time between January 27, 2025 and April 10, 2025, claimant remained available to accept additional work assignments through the website, including from the employer, but the employer did not offer any during that period.³

(4) By early April 2025, claimant had accepted an offer of temporary work in Canada from another employer. On April 10, 2025, claimant notified the employer he would be leaving Nashville and was no longer available to accept work assignments there if any arose. Claimant believed that if he returned to Nashville, the employer would allow him to immediately resume accepting any work assignments that were available.

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

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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). "In the case of individuals working for temporary agencies . . . the employment relationship shall be deemed severed at the time that a work assignment ends." OAR 471-030-0038(1)(a).

The order under review concluded that claimant voluntarily quit work on April 10, 2025 by notifying the employer he was leaving Nashville and was no longer available to accept work assignments there. Order No. 26-UI-323229 at 3. The record does not support this conclusion.

Claimant performed work for the employer for a total of 18 hours over three weeks in January 2025. The work was performed in brief shifts at various restaurants that, presumably, were not owned or operated by the employer. Claimant obtained these work assignments through a website that aggregated available assignments from the employer and four other businesses, and allowed claimant to apply for or accept

to conclude that the Department deemed claimant to be an employee, rather than an independent contractor. *See* ORS 657.040(1) ("Services performed by an individual for remuneration are deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Director of the Employment Department that the individual is an independent contractor, as that term is defined in ORS 670.600.")

³ Claimant was in Portland, Oregon during February 2025. Claimant continued to use the website to seek and accept work assignments there from other employers that month, but the employer did not offer claimant any work assignments in any location.

assignments at his discretion. Under these circumstances, the employment relationship between claimant and the employer was akin to that of an employee working for a temporary agency, in that it existed only for the duration of each assignment. Therefore, under OAR 471-030-0038(1)(a), the most recent employment relationship was severed at the end of claimant's final assignment from the employer, which occurred on or shortly before January 27, 2025. As claimant completed his final assignment, the employer was the party moving to sever the relationship because they had no further work available for claimant regarding that assignment. Accordingly, the work separation was a discharge that, more likely than not, occurred on January 27, 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 his most recent temporary work assignment concluded. The record shows that the employer was willing to continue offering any available work assignments to claimant through at least April 10, 2025, when claimant informed them that he was leaving the Nashville area. The record therefore lacks any evidence that the most recent employment relationship ended in January 2025 for any reason other than lack of work. Accordingly, the employer has not shown that claimant was 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. 26-UI-323229 is set aside, as outlined above.

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

DATE of Service: May 6, 2026

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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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