

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0508

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 13, 2026, 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 March 29, 2026 to April 3, 2027 (decision # L0017065691). Claimant filed a timely request for hearing. On April 30, 2026, ALJ Krueger conducted a hearing, at which the employer failed to appear, and on May 1, 2026, issued Order No. 26-UI-329089, modifying decision # L0017065691 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective March 22, 2026, and until requalified. On May 13, 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) Hunter Communications, Inc. employed claimant as a marketing manager from January 8, 2024 until March 27, 2026.

(2) In 2025, the employer presented claimant with a set of twelve performance goals. Claimant accomplished all of these goals. Prior to February 24, 2026, claimant had not received any negative feedback about the quality of his job performance.

(3) On February 24, 2026, without warning, claimant's supervisor and the employer's human resources (HR) director summoned claimant to join a meeting by teleconference. In the meeting, the two presented claimant with an "individual development performance plan." Audio Record at 7:41. The plan appeared to have been drafted by claimant's supervisor. It raised two alleged issues with claimant's performance: first, that claimant had been requiring too much detailed step-by-step instruction from the supervisor on

how to complete tasks, and second, that other employees had complained about claimant's communication style and work quality.

(4) The plan called for claimant to be subject to a 30-day period, beginning from the date he signed it, in which his performance would be judged by several success criteria. The criteria included that claimant was to: "Demonstrate ownership of assigned marketing initiatives and complete deliverables without requiring repeated prompting, complete routine tasks independently and reduce reliance on step-by-step direction, [and] demonstrate proactive thinking by generating marketing ideas and solutions that support growth[.]" Audio Record at 15:03. The plan stated that failure to meet the success criteria would result in further disciplinary action, up to and including discharge.

(5) On February 25, 2026, claimant requested a meeting with the HR director to discuss the plan. The next day, February 26, 2026, claimant met in person with the HR director for that purpose. During the meeting, claimant asked the HR director if he would be discharged at the end of the 30-day plan period. The HR director was guarded and gave a non-committal response to the question. Claimant told the HR director that he would inform the employer on March 2, 2026 what he intended to do regarding the plan.

(6) Thereafter, claimant reviewed the plan. Claimant disagreed with the performance issues raised in the plan and thought the success criteria was subjective. Claimant drafted a rebuttal to the alleged issues with his performance raised in it. Claimant was troubled by the subjectiveness of the criteria and thought he would have no objective way to show compliance with them. Claimant was also concerned by the fact that he had no prior documented performance issues, yet had been presented with the plan without warning in a meeting with both his supervisor and the HR director. This worried claimant because over the course of his tenure, three different employees on the employer's leadership team had been discharged abruptly and with no apparent performance problems, and he believed his situation resembled theirs. It also concerned claimant because the presence of the HR director in the surprise meeting on February 24, 2026, to present a plan that the HR director had no apparent role in drafting, suggested to him a probability that he would be discharged because he believed the employer tended to involve the HR director in meetings with employees who were facing a likelihood of being discharged. Claimant also was concerned by the HR director's non-committal response during his February 26, 2026 meeting with her. Claimant determined that if he were to continue working under the plan, the employer would discharge him at the end of the 30-day period.

(7) Claimant also determined that being discharged would harm his future job prospects worse than would a resignation. Claimant resided in southern Oregon where jobs in his field were scarce. In claimant's experience, the business community where he lived was "tight knit," and the fact that he had been discharged would have become known by potential employers. Audio Record at 23:17. Claimant was 60 years old and was concerned that being discharged, combined with his age, would lead to him being subjected to age discrimination in his job search, and that he would have to contend with worse such discrimination if he was discharged than if he voluntarily quit. Claimant decided to quit working for the employer to avoid the harm to his future job prospects that would result from being discharged.

(8) On March 2, 2026, claimant gave notice to the employer of his intent to resign from employment and gave them the rebuttal he had drafted to the issues with his performance raised in the plan. Claimant proposed to leave work effective two weeks thereafter, but offered to continue working for up to 30 days

for the employer, to help ease the employment transition. The employer asked claimant to stay until March 27, 2026, and claimant agreed. On March 27, 2026, claimant resigned, as planned.

(9) Prior to resigning, claimant did not ask his supervisor if he would have been discharged at the end of the 30-day plan period. Claimant worked in southern Oregon and his supervisor was based in New York City. Their communications typically took place over a teleconference platform and claimant found that, throughout his employment, it was difficult to communicate with the supervisor.

CONCLUSIONS AND REASONS: Claimant voluntarily left work with good cause.

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) (September 22, 2020). “[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).

The order under review concluded that claimant voluntarily quit work without good cause. Order No. 26-UI-329089 at 3. The record does not support this conclusion.

Claimant voluntarily quit work with good cause. The facts of this case resemble those of *McDowell v. Employment Dep’t*, 348 Or 605, 236 P3d 722 (2010). In *McDowell*, the Oregon Supreme Court held that a claimant had good cause to quit work where he did so to avoid being discharged, not for misconduct, when the discharge the claimant faced was imminent, inevitable, and would impair his future job prospects.

First, while it may not have been strictly inevitable that claimant would have been discharged at the end of the plan period, the likelihood of discharge was sufficiently probable to place claimant in a situation of gravity. Though the discharge in *McDowell* was inevitable and was deemed to constitute good cause for quitting in that case, a degree of assurance that the discharge will occur that falls short of inevitability may be sufficient to confer good cause to quit, depending on the facts of the case. *See Dubrow v. Employment Dep’t.*, 242 Or App 1, 8, 252 P.3d 857, 869 n.2 (2011), citing *McDowell*, 348 Or 605, 619, 236 P.3d 722, 730 n.9 (stating that “a future discharge need not be certain before a resignation to avoid a discharge can qualify as good cause”; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

Here, the plan called for claimant to face disciplinary action up to and including discharge if he failed to meet certain success criteria. Claimant’s belief that he lacked an objective way to show compliance with the criteria is supported by the record, given that aspects of the criteria, such as “demonstrat[ing] ownership of assigned marketing initiatives” or “generating marketing ideas and solutions that support growth,” were vague or lacked objective metrics for what constituted success. Audio Record at 15:03. These circumstances could lead a reasonable person to conclude, as claimant testified, that “termination was the intended outcome” of the plan. Audio Record at 12:11.

The other points that factored into claimant's belief that he would be discharged were plausible and un rebutted, and further support that claimant faced a probability of discharge. Claimant was aware that during his tenure, the employer had abruptly discharged three employees with no apparent performance problems, which was reminiscent of claimant's situation given that the February 24, 2026 meeting was abrupt and claimant had not previously received any negative feedback about his performance. It was also reasonable for claimant to suspect that the HR director's involvement in the February 24, 2026 meeting increased the likelihood that he would be discharged, as the HR director had no apparent role in preparing the plan and had given claimant a non-committal response on February 26, 2026 when claimant asked her if he would be discharged at the end of the 30-day plan period. Although claimant never asked his supervisor if he would be discharged at the end of the 30-day period, the record fails to show that doing so would have been fruitful, since the HR director had already given a non-committal answer and claimant had found that communication with the supervisor, who lived in New York City, was difficult throughout his employment. Considering these facts together, the likelihood that claimant would be discharged at the end of the plan period was sufficiently probable to place claimant in a situation of gravity.

Next, the discharge claimant was likely to face would not have been for misconduct.¹ The success criteria set forth in the plan were of a vague and subjective nature such that it is not evident that a discharge for failing to meet the criteria would be the result of a willful or wantonly negligent violation of the employer's expectations, as is required to constitute misconduct within the meaning of ORS 657.176(2)(a). Further, there is no evidence of prior instances of violation of policy: claimant had accomplished all the performance goals set for him in 2025, and prior to the February 24, 2026 meeting, claimant had not received any negative feedback about the quality of his job performance. Therefore, a discharge for failing to meet the success criteria, even if a willful or wantonly negligent violation, would likely have been an isolated instance of poor judgment.²

Finally, the record shows that a discharge would have harmed claimant's future job prospects, and that those prospects would have been harmed more appreciably by claimant being discharged than by him quitting work. At hearing, claimant testified that jobs in his field were scarce where he resided in southern Oregon, that the business community was "tight knit" there, and that the fact that he had been discharged would have become known to potential employers. Audio Record at 23:17. Claimant was 60 years old and was concerned that being discharged, combined with his age, would lead to him being

¹ 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).

² 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).

subjected to worse potential age discrimination in his job search than if he voluntarily quit. It stands to reason that this would be the case as employers who learned that claimant became unemployed via discharge might assume the discharge was the result of some undesirable quality sometimes associated with older workers, often rooted in ageist stereotypes, such as that claimant may have been unfamiliar with technology, resistant to change, or have difficulty learning or retaining new information.

For these reasons, the record shows that the facts of this case are aligned with those of *McDowell*. Claimant quit work to avoid a discharge that was sufficiently likely to occur, which would not have been for misconduct. That probable discharge would have harmed claimant's future job prospects to a degree worse than a resignation. There were no reasonable alternatives to leaving work for, as discussed, the record shows that claimant would likely be discharged following 30-day plan period, so the situation of gravity brought on by the probable discharge could not be avoided. Claimant therefore quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

DECISION: Order No. 26-UI-329089 is set aside, as outlined above.

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

DATE of Service: June 26, 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.

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 الاستئناف 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

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Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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