

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0509

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 6, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits from February 8, 2026 to February 6, 2027 (decision # L0016949828). Claimant filed a timely request for hearing. On April 29, 2026, ALJ Murdock conducted a hearing, at which the employer failed to appear, and on May 7, 2026, issued Order No. 26-UI-329618, modifying decision # L0016949828 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective February 8, 2026 and until requalified. On May 13, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The city of Phoenix, Oregon employed claimant as a police officer from September 2021 until February 13, 2026. Claimant was a member of a union, Teamsters Local 223.

(2) The employer prohibited their police officer employees from having significant contact with individuals who had a criminal history or were currently engaged in criminal activity. Although the employer may have provided the policy to claimant in writing when he was hired, claimant was not initially aware of it.

(3) At some point prior to December 2025, claimant befriended an individual with a criminal history. Claimant was aware of some aspects of the individual's history but did not know the full scope of it because he had only socialized with the person a few times. For example, claimant knew that the person had a probation officer and was on probation for an offense relating to eluding an arrest. Unbeknownst to claimant, however, the individual he had befriended was also engaging in current criminal activity.

(4) On December 11 or 12, 2025, claimant's lieutenant met with claimant, advised him of the policy prohibiting contact with those engaged in criminal activity, and began questioning claimant about his friendship with the individual. Thereafter, claimant came to suspect that his friend was also engaging in current criminal activity. This surprised claimant as the individual had not told him that they were doing

so and claimant thought they were doing their best to conduct themselves in a morally correct and law-abiding manner.

(5) On December 23, 2025, the employer placed claimant on administrative leave pending an investigation into whether he had violated the policy and, if so, what action, if any, to take.

(6) After being placed on leave, claimant discussed the matter with his union representative. The representative advised claimant not to cooperate with the investigation. Based on this advice, with which a separate union lawyer and a private lawyer concurred, claimant opted not to cooperate with the investigation. The union representative also told claimant that in his experience, the results of such investigations were not favorable to officers. The representative recommended that claimant resign, and thereby mitigate any damage that might come from the investigation to claimant's ability to find a job in the future.

(7) On February 13, 2026, claimant resigned as the union representative had advised him to do.

(8) At the time of his resignation, the employer had not yet completed their investigation of claimant. Claimant thought it was possible that the employer would discharge him upon completion of their investigation. If it had been guaranteed that claimant would not have been discharged following the investigation, he would have stayed in the job and eventually applied to transfer to another department.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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).

Per OAR 471-030-0038(5)(b), leaving work without good cause includes:

* * *

(F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;

* * *

A person may quit work with good cause where the impending discharge would not be for misconduct and other criteria are met. See *McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010) (claimant had good cause to quit work to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects).

Claimant quit work without good cause. The record supports the inference that claimant resigned to avoid a potential discharge, as he resigned at the recommendation of the union representative who had

stated that, in his experience, the results of investigations such as that pending against claimant were not favorable to officers. The inference is further supported by the fact that claimant testified that he thought it was possible that he would be discharged, and that he would have stayed in his job and later pursued a transfer to another department, if it was guaranteed that he would not have been discharged following the investigation. Audio Record at 17:40, 23:01. It is therefore warranted to assess whether, under OAR 471-030-0038(5)(b)(F), claimant left work to avoid a potential discharge for misconduct.

Evaluating OAR 471-030-0038(5)(b)(F), the available evidence fails to show that claimant's conduct that was under investigation amounted to misconduct within the meaning of ORS 657.176(2)(a).¹ The employer's expectation was that claimant was to refrain from having significant contact with individuals who had a criminal history or were currently engaged in criminal activity. It is not evident that claimant's conduct of socializing with the individual a couple of times was significant enough to run afoul of this expectation. Further, claimant was not aware of the expectation until he met with his lieutenant (though he may have received a copy of the policy at hire). It is therefore doubtful, even if he violated the expectation, that he did so with the mental state of either willfulness or wanton negligence, as is required to constitute misconduct within the meaning of ORS 657.176(2)(a). Thus, the record fails to show that a potential discharge of claimant following the investigation would have been for misconduct, and so it is not warranted to conclude that claimant left work without good cause under OAR 471-030-0038(5)(b)(F).

However, applying the standard rule contained in OAR 471-030-0038(4), which requires one to assess whether claimant left work for a reason of such gravity that he had no reasonable alternative but to quit work when he did, claimant voluntarily left work without good cause. Claimant left work to avoid a potential discharge. However, claimant did not face a situation of gravity because a discharge was merely possible at the time that he quit.

At the time of his resignation, the employer had not yet completed their investigation. While there was certainly a chance the employer would decide to discharge claimant upon completion of the investigation, it is also possible that they may not have. On the one hand, claimant's union representative had stated that such investigations *usually* did not have outcomes favorable to officers. In addition, claimant was not cooperating with the investigation, which although entirely in claimant's control, may have made it more likely that the employer would ultimately decide to discharge claimant. On the other hand, claimant had only socialized with the individual a couple of times according to his testimony and had been unaware of the person's current criminal activity, mistakenly believing them to have been conducting themselves in a law-abiding manner. These factors suggest the employer may have ultimately chosen to pursue some lesser form of discipline. Indeed, when asked at hearing whether he thought the employer would discharge him upon completion of their investigation, claimant testified merely that he thought it was "entirely possible" and that he had reason to believe that they were

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).

“looking for a reason to get rid of me.” Audio Record at 17:40. The mere possibility that claimant would be discharged falls short of the degree of assurance of a discharge recognized in case law as sufficient to give rise to a grave situation. *See, e.g., McDowell v. Employment Dep’t*, 348 Or 605, 236 P3d 722 (2010) (suggesting that the future discharge needs to be imminent and inevitable); *Dubrow v. Employment Dep’t*, 242 Or App 1, 252 P3d 857 (2011) (suggesting that a future discharge does not need to be certain for a quit to avoid it to qualify as good cause; likelihood is not dispositive of the issue but it does bear on the gravity of the situation).

For these reasons, claimant did not establish that he faced a grave situation when he resigned to avoid a discharge, not for misconduct, before the employer’s investigation was complete when it was merely possible that the employer would ultimately discharge claimant. Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits effective February 8, 2026.

DECISION: Order No. 26-UI-329618 is affirmed.

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

DATE of Service: June 25, 2026

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 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.

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