

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0057**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct connected with work (decision # 133723). Claimant filed a timely request for hearing. On January 9, 2020, ALJ Vaughn conducted a hearing, and on January 13, 2020 issued Order No. 20-UI-142536, concluding claimant voluntarily left work without good cause. On January 16, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant filed a written argument. Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) North Clackamas School District #12 employed claimant as a bus driver from October 2, 2018 until May 28, 2019.

(2) The employer expected its bus drivers to remain alert and drive defensively at all times in order to avoid preventable accidents and collisions. The employer's expectations were contained within its handbook and the Oregon Transportation Manual, which it provided to claimant. Claimant was aware of the employer's expectations regarding the safe operation of its vehicles.

(3) Prior to March 21, 2019, claimant had been involved in what the employer considered to be two preventable accidents.

(4) On March 21, 2019, claimant was involved in what the employer considered to be a third preventable accident. Claimant had stopped his bus in a school bus loading zone and intended to exit the bus. Before doing so, claimant failed to secure the bus, causing it to roll backwards and strike the bus behind him, causing minor property damage. Thereafter, the employer issued claimant a letter of

reprimand for his failure to remain alert and secure the bus, which resulted in a preventable accident, and extended claimant's probationary period of employment.

(5) On May 17, 2019, claimant was involved in what the employer considered to be a fourth preventable accident. Claimant had been traveling along one of his bus routes intending to make a right turn. As he did so, he failed to make his turn wide enough and scraped a concrete post, causing minor property damage to the side of the bus. Thereafter, the employer issued a letter to claimant reaffirming the employer's expectations regarding the safe operation of its vehicles.

(6) On May 21, 2019, claimant was involved in what the employer considered to be a fifth preventable accident. Claimant had been backing his school bus into a parking space when a mirror on the bus struck a parked car, causing minor property damage. Another employee had to complete parking the bus for claimant. Later that day, the employer placed claimant on paid administrative leave pending an investigation. Claimant understood that given the number of accidents he had been involved in that the employer might terminate his employment.

(7) On May 28, 2019, claimant requested that claimant complete an employer separation of employment form on which claimant checked a box that indicated that claimant was quitting his employment to "seek other employment." Audio Record at 5:00 to 5:45.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-142536 should be set aside and this matter remanded for further development of the record.

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 Department*, 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) (December 23, 2018). "[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 Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time. Quitting work without good cause includes quitting suitable work<sup>1</sup> to seek other work, or for self-employment. OAR 471-030-0038(5)(b)(A) and (G).

Order No. 20-UI-142536 concluded that claimant voluntarily quit work "to seek other work" and did so without good cause, reasoning that although claimant believed that he was not a "good fit" for the position because he lacked sufficient training and experience for the job, he failed to show that the work was unsuitable for him and otherwise failed to pursue the reasonable alternative of requesting additional training. Order No. 20-UI-142536 at 2-3. However, the record was not sufficiently developed to reach that conclusion.

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<sup>1</sup> In determining whether any work is suitable for an individual, the Department considers, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual, and the distance of the available work from the residence of the individual. ORS 657.190.

With regard to whether claimant's work was suitable for him, the record fails to show any detail regarding claimant's occupational history and experience, particularly whether he had engaged in any driving occupations prior to working for the employer. It also fails to show the extent of any relevant training claimant may have received either prior to or while working for the employer. The record also fails to show whether, in light of his recent accident history, claimant would have been provided additional training had he requested it. Finally, the record fails to show the status of claimant's driver's license on and after May 28, 2019, and if it had been suspended or revoked as a result of claimant's accident history, when that action had been taken, and for what reasons. If it had been revoked prior to May 28, 2019, the provisions of OAR 471-030-0038(5)(b)(E)<sup>2</sup> should have been considered and explored with claimant.

At hearing, when claimant was asked what his understanding was regarding why he had been placed on administrative leave, claimant responded, "With the pattern of previous events, I understood exactly what was happening . . . that I might be terminated." Audio Record at 16:30 to 17:15. Given that understanding, the record fails to show that any inquiry was made concerning why claimant may have believed that quitting when he did was preferable to waiting to determine if he would be discharged and, if claimant quit to avoid a potential discharge, whether he believed a discharge on his employment record would have made it difficult for him to find future work.

If claimant quit to avoid an imminent discharge from employment, OAR 471-030038(5)(b)(F)<sup>3</sup> may have applied and the record developed with regard to that provision. The record fails to show what conversations may have transpired between claimant and the employer between May 21 and May 28, 2019, when claimant was presented with and signed the work separation form that indicated that he was quitting "to seek other work." Although the employer's witness denied that by May 28, a decision had been made to discharge claimant, the record fails to show whether claimant likely would have been discharged shortly thereafter, given that the employer had determined that he had caused five preventable accidents in a relatively short period of time, had extended his probationary period, and had placed him on administrative leave. Audio Record at 6:00 to 7:00. If claimant's discharge was imminent,

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<sup>2</sup> OAR 471-030-0038(5)(b)(E) provides, in relevant part,

(b) Leaving work without good cause includes, but is not limited to:

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(E) Willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual;

<sup>3</sup> OAR 471-030-0038(5)(b)(F) provides, in relevant part,

(b) Leaving work without good cause includes, but is not limited to:

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

an inquiry should have been made to determine whether the employer believed such a discharge would have been for misconduct and why.

The intent of this decision is not to constrain the inquiry on remand. In addition to the suggested lines of inquiry, any additional inquiry that is necessary or relevant to the nature of claimant's work separation and whether or not it is disqualifying also should be made. On remand, the parties should also be allowed to provide any additional relevant and material information or testimony about the work separation and prior incidents, and to cross-examine each other as necessary. Any new documentary evidence the parties wish to offer at the hearing on remand must be provided to the ALJ and the other parties before the hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. 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 for a determination of whether claimant voluntarily left work with or without good cause, Order No. 20-UI-142536 is reversed, and this matter is remanded.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-142536 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**DECISION:** Order No. 20-UI-142536 is set aside, and this matter remanded for further proceedings consistent with this order.

D. P. Hettle and S. Alba;  
J. S. Cromwell, not participating.

**DATE of Service:** February 20, 2020

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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 desisyong ito.

## 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**

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**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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