

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0201**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 5, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from benefits effective December 22, 2019 (decision # 80202). Claimant filed a timely request for hearing. On March 4, 2020, ALJ Murdock conducted a hearing, and on March 6, 2020 issued Order No. 20-UI-145804, affirming the Department's decision. On March 10, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based upon the record. EAB did not consider additional evidence under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). EAB did not consider claimant's mother's doctor's note because claimant stated he did not provide a copy of it to the employer, as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**EVIDENTIARY RULING:** The evidentiary ruling in Order No. 20-UI-145804 erroneously stated that "[n]o exhibits were offered or admitted into evidence." See Order No. 20-UI-145804 at 1. In fact, claimant offered eight pages of documents into evidence, which the ALJ marked as Exhibit 1 but did not admit into evidence because claimant had not provided a copy of them to the employer.

**FINDINGS OF FACT:** (1) Urban League of Portland employed claimant as a community health worker from January 28, 2014 to December 24, 2019.

(2) Prior to June 2019, claimant's mother, who lived in Georgia, became sick. In approximately June 2019, claimant began speaking to the employer of his mother's ill health. In July or August 2019, claimant took a two- to three-week vacation from work to visit his mother. He noticed that his mother was getting sicker, and knew that he would need to take more time off because she needed more help than she was getting.

(3) After returning from his vacation, claimant began discussing with the employer that he was going to need more time off to go see his mother. Claimant had approximately 115 hours of paid leave accrued.

(4) Claimant's mother was scheduled to have surgery in December. Claimant wanted to be there for her surgery, and in late November 2019 submitted a request for another two weeks off work. The employer initially approved the leave request, but then told him that because he was the only person in his department that he could not two weeks of his accrued leave. The employer approved claimant to use one week of accrued leave and then return to train someone.

(5) In early December 2019, claimant traveled to Georgia for a week. Ultimately, the employer allowed claimant to stay for the full two weeks, although he had to return to work for a day to do the training. While claimant was in Georgia, his mother began to have complications. She required 24-hour care, but was only provided with 10 hours of paid care per day. Claimant was the only person able to provide his mother with care for the other 14 hours per day. Claimant decided he needed to leave his job and move to Georgia to help his mother.

(6) At the time claimant quit work, he knew his mother would need help for quite some time, and possibly for the rest of her life. Claimant did not know when or if she would stop needing his care.

(7) On December 10, 2019, claimant submitted two weeks' notice of his resignation to the employer so he could move to Georgia to help take care of his sick mother. He quit work effective December 24, 2019.

(8) At all relevant times, claimant was not aware whether or not he would have qualified for 12 weeks of leave under the Oregon Family Leave Act.<sup>1</sup> Claimant was not able to move his mother from Georgia to Oregon because he could not afford to do so, could not afford to get the medical equipment she needed, and because she was sick and all of her medical care was set up in Georgia.

(9) Claimant had discussed the reason he was leaving work with the employer, and they "knew that he had to go be with his family". Transcript at 45. The employer offered claimant a position as an independent contractor to work on a project located in Portland, which claimant could not do because he had to leave Portland. Although the employer knew the reason claimant was leaving work, the employer did not offer claimant a leave of absence or suggest that one might be available to him. Claimant did not ask the employer for a leave of absence because he "could barely get the two weeks of that I was asking for". Transcript at 23.

**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 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

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<sup>1</sup> EAB has taken notice of the length of a leave of absence under the Oregon Family Leave Act (OFLAA), which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at [https://www.oregon.gov/boli/TA/pages/t\\_faq\\_oregon\\_family\\_leave\\_act\\_01-2011.aspx#amount\\_of\\_leave](https://www.oregon.gov/boli/TA/pages/t_faq_oregon_family_leave_act_01-2011.aspx#amount_of_leave). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

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.

Claimant quit work to move to Georgia to provide care for his ill mother. Claimant’s mother needed 24-hour care but only received 10 hours of paid care per day, and claimant was the only person who could help his mother with the other 14 hours of care she needed each day. Claimant’s situation was grave.

The order under review nevertheless concluded that claimant voluntarily left work without good cause, reasoning that because claimant “did not request a leave of absence,” which the order stated was a reasonable alternative to quitting work, “he left work without good cause under Employment Department law.” *See* Order No. 20-UI-145804 at 3. The record does not support that conclusion.

Although claimant did not request a leave of absence, he was not aware that he had the option to do so. He had requested a two-week absence from work to help his mother through her surgery, and the employer initially denied the request because they could not accommodate a full two-week absence. Claimant did not think about asking for a leave of absence under those circumstances because he “could barely get the two weeks of that I was asking for”. Notably, claimant had at all relevant times kept the employer informed of his situation, his mother’s illness, and his need for time off; the fact that the employer did not offer claimant a leave of absence under those circumstances strongly suggests that a leave was not available to him.

Also notably, claimant quit his job in December, and as of the hearing in this matter held in March 2019, approximately three months later, claimant was still in Georgia caring for his mother. At the time he left work, he did not know how long he would need to care for his mother, and anticipated she might even require care for the rest of her life. Given that the duration of any leave claimant could have requested was unknown, the majority of the leave would have been unpaid, and claimant’s actual need for time off work has extended past the 12 weeks of leave mandated under OFLA, his employment was likely to end regardless whether or not he requested leave under OFLA. For all those reasons, singly or considered together, requesting a leave of absence was not a reasonable alternative to quitting work under the circumstances described at the hearing.

On this record, claimant did not have any reasonable alternatives to quitting work to move to Georgia and care for his mother. No reasonable and prudent person or normal sensitivity, exercising ordinary common sense, would have continued working under the circumstances claimant faced at the time he quit. Claimant voluntarily left work with good cause, and is therefore not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 20-UI-145804 is set aside, as outlined above.

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

**DATE of Service:** April 14, 2020

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately 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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 دستور العمل 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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