

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0218**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from benefits effective December 1, 2019 (decision # 135539). Claimant filed a timely request for hearing. On February 27, 2020, ALJ Shoemake conducted a hearing at which the employer failed to appear and issued Order No. 20-UI-145260, affirming the Department's decision. On March 12, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in support of her application for review. However, claimant's argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019). OAR 471-041-0080(2)(a). Moreover, claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a), and the 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 as required by OAR 471-041-0090. For these reasons, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Amazon.com employed claimant as a seasonal sortation associate from October 26, 2019 to December 7, 2019.

(2) As a new hire, claimant had a 90-day probationary period and was awarded 13 attendance points under the employer's attendance policy. Under that policy, if a new hire exhausted all their attendance points within the 90-day probationary period, the new hire was automatically discharged and became ineligible for rehire. If a new hire left work before the end of the probationary period with attendance points remaining, the new hire was eligible for rehire after 90 days had passed. Attendance points were deducted for absences from work and for leaving work early before the end of the assigned shift.

(3) The employer assigned claimant to work four 10-hour shifts on Friday, Saturday, Sunday and Monday nights from 6:00 p.m. to 4:45 a.m. At the time claimant began work for the employer, she also worked part-time as a school bus driver and was required to be available Monday through Friday from 6:00 a.m. to 5:00 p.m.

(4) Between October 26 and early December 2019, claimant learned that her job with the employer was more physically exhausting for her than she had anticipated at hire. The job was fast paced, required an average of 17,000 steps per 10-hour shift, constantly required her to bend and stoop and frequently required her to lift and sort packages over 50 pounds without assistance. That caused her occasional backaches and left her little time to sleep given her driving job, which required her to be available Monday through Friday from 6:00 a.m. to 5:00 p.m. Although claimant attempted to work through her entire shifts, because the job was so exhausting for her, she often left work before the end of her shift, resulting in the assessment of attendance points against her.

(5) Claimant explained to her managers her physical difficulty with the job, and requested help in sorting heavy packages and a shift transfer to weekend days, both of which were denied. Claimant did not ask for a leave of absence because it was unavailable to probationary employees. She requested reduced hours from her school employer, which gave her time off on Monday mornings to get some rest. However, that accommodation did not end claimant's need to frequently leave work with the employer before the end of her shift.

(6) By early December, claimant had only two attendance points remaining and knew she would soon exhaust her remaining points, resulting in her automatic discharge. She did not want a discharge on her resume or become ineligible for rehire at a later time.

(7) On December 7, 2019, claimant quit work because it was too exhausting for her at that time and she did not want to be terminated for using up all of her attendance points, making her ineligible for rehire.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit 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 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, in part, to avoid being discharged. Under OAR 471-030-0038(5)(b)(F), an individual who leaves work to avoid a discharge for misconduct or potential discharge for misconduct has left work without good cause. OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

Claimant quit work to avoid what was, more likely than not, a certain discharge that would not have been for misconduct. On December 7, 2019, claimant was on the verge of using up all of the attendance points she was allowed during her probationary period. The record shows that claimant used up her attendance points by leaving many of her work shifts early due to her exhaustion and difficulty with the physical requirements of the job. As such, while claimant's attendance might have failed to meet the employer's standards, her efforts to meet those standards despite her exhaustion and physical difficulties suggest that the failure was not the result of willful or wantonly negligent misconduct.

Whether quitting work in lieu of a prospective discharge is quitting for good cause depends on whether a reasonable person facing discharge would consider the prospect so grave that resigning was the only reasonable option. In this case, at the time claimant quit, her automatic discharge for using up all of her attendance points before the end of her probationary period was likely inevitable and imminent given her continuing difficulty with working her entire shift due to her exhaustion and the physical requirements of the job. Claimant wanted to avoid having a discharge from employment on her resume, which could affect her future employment prospects in general, and knew that if she was discharged for using all of her attendance points before 90 days passed, she would be ineligible for rehire by the employer at a later time. Her employment was physically exhausting for her, the extent of which she had not anticipated at hire, which also affected her health and safety in her driving job. Claimant's situation was grave. Claimant had explored potential options available to her short of quitting, such as requesting help or a shift transfer from the employer without success, and reduced hours from her school employer, with very little success. Viewing the record as a whole, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have concluded she had no reasonable alternative but to leave work when she did.

Claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation from the employer.

**DECISION:** Order No. 20-UI-145260 is set aside, as outlined above.

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

**DATE of Service:** April 17, 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](http://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

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## 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.

## 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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