

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0324**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 13, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144502). Claimant filed a timely request for hearing. On April 16, 2020, ALJ Janzen conducted a hearing, and on April 17, 2020 issued Order No. 20-UI-148264, affirming the Department's decision. On April 28, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's April 28, 2020 written argument when reaching this decision; however, EAB did not consider claimant's May 11, 2020, rebuttal argument when reaching this decision because 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) (May 13, 2019). EAB reviewed the employer's written argument; however, the employer's written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer'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, and the parties' arguments only to the extent they were based thereon, when reaching this decision.

**FINDINGS OF FACT:** (1) The employer employed claimant as an office assistant from June 1, 2013 until on or about February 7, 2020. Claimant worked for the employer two days a week and her job responsibilities as an office assistant included scanning and filing documents, as well as cleaning.

(2) The employer and claimant had a personal relationship that extended beyond the work environment. In addition, the employer had served as an attorney to claimant's brother on some other issues, and had a personal relationship with him as well.

(3) At some point prior to February 2019, claimant's brother, who lived in Las Vegas at the time, had left the employer over \$100,000, with the request that the employer "hold onto his money and budget it for him." Transcript at 27. Claimant's brother made this request to the employer in her capacity as a "personal friend," not as his attorney. Transcript at 27. The employer managed claimant's brother's money and would provide it to him, upon his request, by either traveling to Las Vegas and personally giving it to him, or through Western Union transactions.

(4) In approximately April 2019, claimant began to have concerns about the manner in which the employer was managing her brother's money. Claimant perceived that there were a lot of "lies" and "deception" in the employer's actions on behalf of her brother, and she was concerned with the employer's inability to produce, upon claimant's request, any cancelled checks, or Western Union receipts. Transcript at 7, 8. Claimant obtained a power of attorney (POA) from her brother over his financial affairs. Claimant's brother was later diagnosed with dementia, and claimant took over responsibility for his care, which included claimant's decision to move her brother from his home in Las Vegas to a nursing home. As POA, claimant requested that the employer provide her with her brother's cash in the amount over \$100,000. The employer complied with this request. Claimant also requested that the employer provided claimant with a ledger reflecting the transactions she made for claimant's brother. The employer provided claimant the requested ledger and, upon her review, claimant viewed the ledger as being "full of errors." Transcript at 7, 9, 15. Claimant continued working for the employer during this time "[b]ecause [she] thought we could resolve these problems...." Transcript at 8.

(5) Between April 2019 and November 2019, the employer became concerned about claimant's management of both her brother's financial affairs and his person, now that claimant was her brother's POA. The employer believed that claimant had improperly used her brother's money to buy herself a home; that she had improperly taken her brother's car; and that she was improperly keeping their other siblings uninformed about the fact that she had possession of her brother's cash as POA. The employer viewed claimant's actions as "wrong," that "she [was] stealing," and that "she knows it's wrong." Transcript at 25. The employer wrote a letter to claimant's brother's case manager stating that claimant's brother did not want to be in a nursing home, but instead wanted to live independently. The employer did not inform claimant about this letter.

(6) In November 2019, claimant requested that the employer provide claimant the "documentations (sic), and statements, and receipts" related to her management of claimant's brother's money prior to April 2019. Transcript at 9. In response, the employer explained to claimant that she had provided all of the receipts to claimant's brother and that claimant's brother "has all of the paperwork...." Transcript at 27. Upon finding out that the employer did not have any of the paperwork or receipts, claimant believed that the employer's "credibility... was shot." Transcript at 9. Claimant chose to continue working for the employer during this time because the employer "was a dear friend," and claimant "was hoping to work through this and save this friendship and save [her] employment." Transcript at 10.

(7) On January 28, 2020, the employer had a conversation with claimant where the employer told claimant that "[she] did not agree with what [claimant was] doing with [her] brother" and that "[i]t's not

what he wants,” and called claimant a “thief”.<sup>1</sup> Transcript at 23. The employer also told claimant that “her job was safe,” and that:

We’re going to compartmentalize, so as far as I’m concerned, we can have conversations about your brother after work, but I’m not gonna talk about it at work. I’m not going to treat you any differently at work, even though you are doing these things to your brother....

Transcript at 19, 23-24. Claimant began having trouble sleeping and eating, and was experiencing stress.

(8) On February 7, 2020, claimant sent a text message to the employer stating, “Sadly, we need distance. I’m at the point I can’t work for you any longer. I’m requesting unemployment.” Exhibit 1. Claimant sent the message because she had been trying for four months to get receipts, she was at her “wits’ end,” and “[t]hings were really bad.” Transcript at 11. Claimant’s subjective intent in sending the text was not to quit her job, rather it was “to get some space and try to settle this and save my employment and save our friendship.” Transcript at 16. The employer responded to claimant’s text message stating, “I don’t want a thief working for me. Turn in your keys please. Your resignation is accepted.” Exhibit 1. The employer believed that claimant had quit her job based on the substance of the text, and because she had told claimant the week before that her job was safe. But for the text message from claimant, the employer would have been willing to continue employing claimant.

(9) On or about February 14, 2020, the employer had a staff meeting with her remaining employees. The conversation included the employer’s statement to her employees that claimant would no longer be working for the company, and that claimant was a “thief”. Transcript at 25, 37.

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

**Nature of the work separation.** The order under review concluded that claimant voluntarily quit her employment without good cause. In her written argument, claimant argues that she was discharged, but not for misconduct. The first issue is therefore the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The order under review concluded that the nature of claimant’s work separation could be determined directly from the express words claimant used in her February 7, 2020, text to the employer: “Sadly, we need distance. I’m at the point I can’t work for you any longer. I’m requesting unemployment.” While the order’s additional finding that “anything [the employer] said about the nature of the work separation after claimant’s text message on February 7, 2020, is not relevant to the determination of the work separation” is incorrect, on this record the preponderance of the evidence supports the order’s conclusion that, objectively considered, claimant’s words in the February 7, 2020 text message reflected an unambiguous intent to voluntarily leave her employment.

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<sup>1</sup> Although the transcript presented some confusion regarding whether the employer called claimant a “thief” prior to claimant’s work separation, the totality of the record makes clear that the employer called claimant a “thief” during this meeting. *See e.g.* Employer’s written argument at 2.

**Voluntary leaving.** 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). “[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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

The order under review found that claimant had failed to demonstrate that she left her employment for good cause. The order reached this conclusion based on: (1) the employer’s statement to claimant during the January 27, 2020 meeting that claimant’s job was not in jeopardy; (2) the lack of record evidence demonstrating that the employer acted inappropriately in the employer’s dealings with claimant’s brother; and (3) the lack of evidence indicating that the employer had any of the record documents claimant repeatedly requested. Order No. 20-UI-148264 at 3. In addition, the order found it persuasive that “claimant was able to work for the employer for several months while the disagreement persisted,” yet as of February 7, 2020, she was no longer able to, and that it was unclear from the record “what [had] changed [as of] February 2020.” Order No. 20-UI-148264 at 3. However, the record does not support the conclusion that claimant voluntarily left work without good cause.

While the order under review correctly recognized the “ongoing dispute” between claimant and the employer and suggested that “claimant may have faced an important situation that was uncomfortable,”<sup>2</sup> by concluding that claimant left work without good cause, the order under review failed to recognize the substantial change in the relationship between claimant and the employer as a result of the January 28, 2020 meeting between the two. The record reflects that during that January 28, 2020, meeting the employer sought to ease claimant’s concerns that the employer might discharge claimant by informing her that her job was safe. However, the record also demonstrates that during that conversation the employer also told claimant that “[she] did not agree with what [claimant was] doing with [her] brother” and that “[i]t’s not what he wants,” and called claimant a “thief.” While it is true that the employer told claimant that the employer’s personal feelings would remain “compartmentalized” and would not affect her working relationship with claimant, the reality is that no reasonable person of normal sensitivity, exercising ordinary commonsense, would have felt any other alternative but to leave work after their boss accused them a “thief.” In fact, the preponderance of the evidence demonstrates that during this period claimant began feeling stress, and was having trouble eating and sleeping. It therefore is reasonable to infer that the ongoing dispute between the employer and claimant had reached an untenable position after the employer’s harsh characterization and criticism of claimant at the January 28, 2020 meeting, leading to negative health consequences for claimant, and signifying an irreparable breakdown of their relationship.

Furthermore, despite the employer’s belief that she could “compartmentalize” her personal relationship with claimant from their working relationship, the preponderance of the evidence demonstrates that this

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<sup>2</sup> Order No. 20-UI-148264 at 3.

was not the case. The record shows that the employer not only called claimant a “thief” during the January 28, 2020, meeting, and in response to claimant’s February 7, 2020 text message, but she also told her remaining employees a week after claimant’s work separation that claimant was a “thief.” Yet, the record fails to include any evidence indicating that claimant performed her job in an untrustworthy manner or that she stole anything from the employer while performing her work duties, such that calling claimant a “thief” to her former coworkers was warranted. This fact not only establishes the employer’s inability to compartmentalize her ongoing dispute with claimant, despite her intentions not to do so, but it also serves to reinforce the substantial change in the employment relationship that occurred between the January 28, 2020 meeting and claimant’s February 7, 2020 text message. Under the totality of the circumstances, the clear escalation of the ongoing dispute between claimant and the employer became a reason of such gravity that claimant had no other reasonable alternative but to leave work.

Claimant therefore voluntarily left work with good cause, and she is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 20-UI-148264 is set aside, as outlined above.

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

**DATE of Service:** May 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](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.

**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>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.