

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0386**

*Order No. 20-UI-148602 – Affirmed, Disqualification*  
*Order No. 20-UI-148612 – Affirmed, Ineligible Weeks 06-20 through 09-20*

**PROCEDURAL HISTORY:** On March 20, 2020, the Oregon Employment Department (the Department) served notice of two administrative decisions; one concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits effective January 26, 2020 (decision # 124011), and the other concluding claimant was not available for work from February 2, 2020 through February 29, 2020 (decision # 140932). Claimant filed a timely request for hearing on each decision. On April 21, 2020, ALJ Schmidt conducted separate hearings on decisions # 124011 and # 140932, and on April 23, 2020 issued Order No. 20-UI-148602 affirming decision # 124011, and Order No. 20-UI-148612 affirming decision # 140932. On May 13, 2020, claimant filed timely applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-148602 and 20-UI-148612. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0386 and 2020-EAB-0387).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 20-UI-148612, affirming the Department's decision that claimant was not available for work from February 2, 2020 through February 29, 2020 (weeks 06-20 through 09-20), is **adopted**. The remainder of this decision will address whether claimant voluntarily quit work without good cause.

**FINDINGS OF FACT:** (1) Columbia Memorial Hospital employed claimant as a financial services representative from July 2, 2018 through January 27, 2020.

(2) At the time of her employment, claimant had recently moved to the area to live with, and take care of, her mother who had been dealing with health issues. At all relevant times, claimant was living with her mother and there was no one else available to assist with her mother's care. At all relevant times, the employer granted Family and Medical Leave Act (FMLA) leave to its employees on a "case-by-case basis," based upon a supporting certification/recertification provided by the pertinent healthcare provider within 15 days of the request. Transcript at 17.

(3) In the summer of 2019, claimant's mother's health condition began to progressively deteriorate, with her symptoms including dementia, breathing and heart problems, and anxiety. In addition to caring for her mother, claimant was also responsible for managing her mother's medication and her daily activities.

(4) In June 2019, claimant sought FMLA leave from her employer and supported her request with a certification from her mother's health care provider. The employer's initial approval for FMLA leave authorized claimant to take her mother to "routine office visits, every three months with the PCP, so it was basically for doctor's appointments." Transcript at 10.

(5) In November 2019, due to the employer's concerns that claimant's FMLA "absences [had] started to increase... exceeding [an] amount that... [the employer] had anticipated," the employer conducted a meeting with claimant to address her absences. Transcript at 18. During the meeting, the employer agreed to rescind the written warning they had contemplated issuing to claimant, but directed claimant to obtain a FMLA recertification from claimant's mother's healthcare provider.

(6) In December 2019, claimant obtained a FMLA recertification from her mother's healthcare provider. The employer authorized FMLA leave to claimant for "up to three days," consistent with the healthcare provider's recertification. Transcript at 9.

(7) On January 24, 2020, claimant called in sick for work due to her mother waking up in the morning and not being able to breath. As the weekend progressed, claimant could not determine if her mother's health issue was related to her dementia or something else, but she thought she had gotten her mother's condition under control as the weekend progressed. By Sunday night, January 26, 2020, however, claimant's mother "started spinning back into that whole thing again," and claimant was "flying blind" in her attempts to address her mother's medical condition. Transcript at 8. Claimant determined that the employer's authorization of three days FMLA leave would not be sufficient going forward to properly care for her mother, and that she could not leave her mother alone.

(8) On January 27, 2020, claimant notified her manager that she was quitting because "it's getting too hard with my mom right now." Transcript at 15. Prior to quitting, claimant did not seek an extended FMLA leave of absence from the employer because she "didn't think it was fair to [the employer] to leave open-ended," and because she believed that it would not be approved and she "woulda been fired, from all of the absences, and all of the occurrences that were happening before...." Transcript at 9.

**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 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. 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 record reflects that claimant faced a grave situation from the summer of 2019 until she voluntarily left her employment because her mother's health condition continued to rapidly deteriorate. During this period claimant missed multiple days of work to care for her mother, but the preponderance of the evidence demonstrates that the employer repeatedly authorized incremental FMLA leave to meet the escalating leave requirements that claimant needed to properly care for her mother. The record reflects that the employer's only requirement in extending claimant's FMLA leave from "routine office visits... every three months" to FMLA leave authorization for "up to three days" was documentary support from claimant's mother's health care provider within 15 days of the employer's request.<sup>1</sup> Although claimant believed that the employer would not have approved an additional, extended FMLA leave request given her prior FMLA absences, and that she had no reasonable alternative other than quitting her job, the preponderance of the evidence demonstrates that the employer was receptive to granting FMLA leave for its employees, had repeatedly provided such leave for claimant, and likely would have approved an extended FMLA leave request had claimant made such a request instead of quitting.<sup>2</sup> Given these circumstances, including the employer's receptivity to granting FMLA leave to its employees, and to claimant in particular, a reasonable and prudent person of normal sensitivity, exercising ordinary commonsense, would not have chosen to leave work without first attempting to exercise the reasonable alternative of requesting extended FMLA leave from the employer.

For similar reasons, claimant has failed to meet her burden in demonstrating good cause for her decision to leave work based on the provisions of OAR 471-030-0038(5)(g) ("Leaving work with good cause includes ... leaving work due to compelling family reasons.") and OAR 471-030-0038(1)(e)(B) ("[C]ompelling family reasons' means: ... [t]he illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off"). Because the record reflects that the employer granted the two FMLA requests claimant previously made and did so in each instance consistent with the certification and recertification provided by claimant's mother's healthcare provider, and because the record demonstrates that claimant chose to voluntarily quit work instead of providing the employer the opportunity to provide extended FMLA leave to claimant, the preponderance of the evidence fails to show that the employer failed to accommodate claimant's request for time off such that claimant has shown good cause to voluntarily quit for compelling family reasons. Claimant therefore voluntarily left work without good cause, and is disqualified from receiving benefits based on this work separation.

**DECISION:** Orders No. 20-UI-148602 and 20-UI-148612 are affirmed.

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

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<sup>1</sup> The employer's 15-day requirement is consistent with federal law. *See* 28 C.F.R. §825.305(b) ("The employee must provide the requested certification to the employer within 15 calendar days after the employer's request....").

<sup>2</sup> The employer's human resources manager testified that had claimant made an extended FMLA leave request the employer would have most likely approved the request and claimant would not "have been fired" over making such a request. Transcript at 16.

**DATE of Service: June 9, 2020**

**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

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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