

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0540**

*Modified*  
*Request to Reopen Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 3, 2019 (decision # 130439). Claimant filed a timely request for hearing. On April 29 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 15, 2020 at 8:15 a.m., at which time claimant failed to appear. On May 15, 2020 issued Order No. 20-UI-149822, dismissing claimant's request for hearing for failure to appear, and leaving decision # 130439 undisturbed.

On May 27, 2020, claimant filed a timely request to reopen the hearing. On June 16, 2020, OAH issued notice of a hearing scheduled for July 2, 2020 at 8:15 a.m. On July 2, 2020, ALJ Shoemake conducted a hearing, and on July 9, 2020, issued Order No. 20-UI-152023, allowing claimant's request to reopen the hearing and affirming decision # 130439. On July 23, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**REQUEST TO REOPEN:** Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant demonstrated good cause for reopening the May 15, 2020 hearing is **adopted**.

**FINDINGS OF FACT:** (1) Claimant began working for Canyon Creek Logging LLC (the employer) in October 2018. Claimant ran a yarder for the employer.

(2) On November 8, 2019, claimant called out sick. On November 10, 2019, the claimant's wife sent a text message to the employer indicating that claimant was too sick to work on November 11, 2019. Claimant's son also worked for the employer and informed the employer that claimant was in the hospital.

(3) On November 23, 2019, after learning that claimant had been released from the hospital, the owner called claimant because he had not heard from claimant regarding claimant's return to work. Claimant told the owner that he was still unable to sit up. The owner told claimant that he was holding his position for him, asked claimant how much time he would need before he could return to work, and indicated that if claimant did not intend to return to work the owner would need to hire a replacement. Claimant responded that he no longer wanted to run the yarder and told the owner to find another operator. At the time, claimant was still recovering from his hospitalization, and was medicated to the point that he later had no recollection that the conversation had taken place.

(4) The employer hired claimant's replacement on December 2, 2019.

(5) At some point in late November or early December 2019, claimant spoke to Brandon (another of the employer's employees) and told him that he was ready to return to work. Brandon informed claimant that the employer had already hired a replacement.

**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.

Order No. 20-UI-152023 concluded that claimant quit work without good cause. The order reasoned that "While the claimant might have had some health concerns at the time, the claimant had the reasonable alternative of requesting a leave of absence or some type of medical accommodation," and that he "did not show that his health issues amounted to a situation so grave as to leave [him] no reasonable alternatives but to quit work." For the following reasons, the record does not support this conclusion.

Although claimant testified that he had no memory of the phone call with the employer on November 23, 2019, both claimant's own testimony and the employer's recounting of claimant's statements during that phone call indicate that, at the time, claimant was sufficiently incapacitated that he could not sit up; and that he was under the influence of opiate narcotics<sup>1</sup> which the hospital had prescribed to him. Based on these facts, it is reasonable to infer that at the time of the November 23, 2019 call, claimant was wholly unable to physically perform his job. The inability to perform a job due to a medical condition is a reason of such gravity that a reasonable and prudent person would leave work.

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<sup>1</sup> Although claimant stated that he does not use "pain pills," he testified that the hospital had given him "Darvocet or Percocet, or some kind of 'cet thing.'" Transcript at 28. From this statement it is reasonable to infer that claimant was likely prescribed narcotic pain medication.

The record also suggests that the employer probably exerted some pressure on claimant to quit by telling him that he needed claimant to either give the employer an estimate of when he could return to work; or else that the employer would “need to find somebody else.” Transcript at 24. Per the employer’s testimony, it was only after the employer posed that ultimatum to claimant that claimant told him to “...go ahead and find another operator.” *Id.*

Further, while Order No. 20-UI-152023 suggested that alternatives to quitting (such as requesting a leave of absence) were available to claimant, those alternatives were not reasonable for a person in claimant’s apparent mental and cognitive state on November 23, 2019. The fact that claimant had no recollection that the phone call with the employer even occurred that day strongly suggests that the pain he was in or the medication he was taking temporarily diminished his capacity for rational decision-making. It is not reasonable to conclude that claimant at that time was capable of meaningfully considering the consequences of his statements to the employer, particularly in light of the pressure that employer exerted on claimant to quit. Lacking such capacity at that moment, no alternatives to quitting would have been reasonable at the time. As such, claimant quit for good cause and is not disqualified from receipt of benefits.

**DECISION:** Order No. 20-UI-152023 is modified, as outlined above.

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

**DATE of Service:** August 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.

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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**

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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