

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0643**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 28, 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 unemployment insurance benefits effective March 22, 2020 (decision # 124745). Claimant filed a timely request for hearing. On September 23, 2020, ALJ Murdock conducted a hearing, and on September 24, 2020 issued Order No. Order No. 20-UI-154388, modifying decision # 124745 by concluding that the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause, disqualifying claimant from receiving benefits effective March 15, 2020. On September 29, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted a written argument to EAB. Pursuant to OAR 471-041-0090(1)(a), EAB admitted claimant's argument into the record, marked as EAB Exhibit 1 because it was necessary to complete the record, and considered the argument when reaching this decision. A copy of EAB Exhibit 1 has not been provided to the employer, as claimant certified that she mailed a copy of the argument to the employer on October 26, 2020. Should the employer require an additional copy, they may contact EAB directly.

**FINDINGS OF FACT:** (1) Churchgate Station Inc. employed claimant as a full-time line cook from June 2019 until March 16, 2020.

(2) Claimant attended college classes part-time during the Spring 2020 term.

(3) On March 3, 2020, claimant informed the employer's kitchen manager that she intended to look for a new job in a different field. From this conversation, the employer understood that claimant would be resigning effective March 21, 2020.

(4) The employer scheduled claimant to work through March 21, 2020 but did not assign her any shifts on the subsequent week's schedule. On March 16, 2020, the employer temporarily shut down its facilities due to the COVID-19 pandemic, laying off all staff, including claimant.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-154388 is reversed and remanded to the Office of Administrative Hearings (OAH).

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) (September 22, 2020). 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). ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. 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).

ORS 657.176(8) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date."

The order under review concluded that the employer discharged claimant, not for misconduct, a few days prior to claimant's planned voluntary leaving, and that claimant's planned voluntary leaving was not for good cause. Order No. 20-UI-154388 at 3. The order based this conclusion upon the assertion that claimant quit because, while she ". . . denied that she planned to leave on March 21, 2020, . . . the employer presented credible testimony to the contrary." Order No. 20-UI-154388 at 3. However, the order's assertion does not fully account for the conflicting evidence contained within the record.

Claimant testified during the hearing that on March 3, 2020, she informed the kitchen manager that she intended to look for another job, but never gave the employer "formal written notice" that she was quitting. Audio record at 21:38 – 22:30. By contrast, the kitchen manager testified that during that conversation, claimant told him that she did not intend to work past spring break [in late March 2020]; that claimant had requested time off for a spring break trip which the employer was unable to accommodate; and that after the employer informed claimant that she could not take the time off, claimant resigned effective March 21, 2020. Audio record at 28:20 – 28:56.

Claimant's version of events suggests that she never actually notified the employer that she was quitting work on a specific date—instead only notifying the employer that she intended to quit on some undetermined future date—whereas the employer's indicates that claimant definitively resigned. The record contains no additional first-person testimony to corroborate either party's account. Instead, the record contains circumstantial evidence such as a text message dated March 10, 2020, in which claimant informs the kitchen manager that she has a job interview scheduled for the following day; an e-mail chain dated February 27, 2020 in which claimant appears to accept the fact that the employer cannot grant her request for time off during spring break; and the employer's schedule for the week of March 23, 2020 on which claimant does not appear. Exhibit 1 at 4, 5, 8.

In short, the record does not contain adequate information to determine whether claimant notified the employer she was quitting work on a specific date. On remand, the ALJ should inquire further of the employer's kitchen manager to determine precisely what claimant stated during their meeting on March 3, 2020. Additionally, because the record contains seemingly-conflicting reports from various employees regarding the reason that claimant purportedly quit, the ALJ should inquire as to which persons claimant purportedly told she was quitting, when she told them, and what reason she gave each person for quitting. Finally, the ALJ should pursue any additional lines of inquiry identified in the final two paragraphs of claimant's written argument. *See* EAB Exhibit 1 at 3. The parties must also be afforded the opportunity to rebut any additional testimony offered during the remand hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant notified the employer she was quitting work on a specific date and, if so, whether her planned quit would have been with good cause, Order No. 20-UI-154388 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-154388 is set aside, and this matter remanded for further proceedings consistent with this order.

**DATE of Service:** November 5, 2020

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

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-154388 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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.

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