

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0681**

*Modified*  
*Request to Reopen Allowed*  
*Reversed and Remanded*

**PROCEDURAL HISTORY:** On July 9, 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 unemployment insurance benefits effective February 2, 2020 (decision # 133349). Claimant filed a timely request for hearing. On August 20, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 1, 2020 at 9:30 a.m. On September 1, 2020, claimant failed to appear at the hearing, and ALJ Williams issued Order No. 20-UI-153522, dismissing claimant's request for hearing based on her failure to appear. On September 20, 2020, claimant filed a timely request to reopen the hearing. On September 22, 2020, OAH served notice of a hearing scheduled for October 6, 2020 at 9:30 a.m. to consider claimant's request to reopen and, if granted, the merits of decision # 133349. On October 6, 2020, ALJ Williams conducted a hearing, and on October 9, 2020 issued Order No. 20-UI-155074, granting claimant's request to reopen and affirming decision # 133349. On October 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** 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). The argument also 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 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**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 allowing claimant's request to reopen is **adopted**. The remainder of this decision addresses whether claimant had good cause to quit work.

**FINDINGS OF FACT:** (1) Best Western Lincoln Sands Suites employed claimant as a part-time housekeeper from August 26, 2019 until February 8, 2020.

(2) Around November or December 2019, the employer began moving about half of claimant's shifts to on-call status due to a seasonal decrease in business. When claimant was on-call, the employer required her to call in an hour before her shift to find out if she was needed that day. The employer did not compensate claimant for the time she spent on-call.

(3) Claimant's working hours and income were reduced as a result of the employer moving some of her shifts to on-call status. During this time, claimant wanted to take a second job, but felt that she would be unable to do so as she was required to be on-call for the employer.

(4) On or around January 27, 2020, claimant gave the employer two weeks' notice that she planned to resign. Claimant's last day of work for the employer was February 8, 2020.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-155074 is set aside, in part, and this matter remanded for further development of the record.

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) (September 22, 2020). "[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.

The order under review concluded that claimant quit "to seek other work" because she "did not like being on-call with the employer half of her work week," which under OAR 471-030-0038(5)(b)(A) was not good cause for quitting. Order No. 20-UI-155074 at 4. However, the order failed to consider the applicability of OAR 471-030-0038(5)(e) and possibly ORS 657.176(6).

Claimant's testimony established that while she was interested in seeking other work, she felt the need to do so because the employer did not schedule her for sufficient hours, and that as a result she was not earning enough to pay her bills. Audio Record at 21:05. Thus, rather than merely quitting work to seek other work, claimant quit work due to a reduction in her hours.

A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e). Claimant suggested in her testimony that being on-call interfered with her ability to return to full time work. Audio Record at 22:18 to 23:10. However, the evidence in the record is not sufficiently developed to determine whether or not this is accurate. On remand, the ALJ should inquire as to how much time each week claimant spent on-call, any requirements that the employer imposed upon claimant while she was on-call, and how (if at all) such requirements limited claimant's ability to return to full-time work. Additionally, the ALJ should develop the record to determine whether claimant's cost of working exceeded what the employer paid her for her time.

The record also fails to establish claimant's actual date of separation. Both parties testified that claimant's last day of work was February 8, 2020. Audio Record at 19:55, 34:06. However, the employer testified that when claimant gave her two-week notice, she indicated that her last day would be February 10, 2020. Audio Record at 38:43. Claimant gave no testimony to either confirm or refute this assertion, and the order under review did not mention it. On remand, the record should be further developed to determine if claimant intended to work until February 10, 2020; if so, why she only worked until February 8, 2020; and, if relevant, whether ORS 657.176(6) (quit without good cause within 15 days of a planned quit with good cause) applies to this separation from work.

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 quit work for good cause, Order No. 20-UI-155074 is reversed with respect to the voluntary leaving issue, and this matter is remanded.

**DECISION:** Order No. 20-UI-155074 is modified, as outlined above.

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

**DATE of Service:** December 2, 2020

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-155074 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.

## 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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