

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0039**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits (decision # 94525). The employer filed a timely request for hearing. On December 29, 2020, ALJ Moskowitz conducted a hearing, and on January 7, 2021 issued Order No. 21-UI-158742, reversing decision # 94525 and concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020. On January 15, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. In claimant's argument, claimant requested that EAB take notice of claimant's 2019 and 2020 earnings information contained in the Department's records. Claimant also requested that EAB take notice of information in the Department's records relating to unemployment insurance claims filed by other claimants who worked for the employer. EAB declined to take notice of any information not contained in the hearing record in this case. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Geiser Grand employed claimant at the employer's restaurant and hotel from January 2019 until March 13, 2020.

(2) Claimant worked as a server for the employer. The employer's business fluctuated and it was customary for the employer to add or cancel claimant's shifts as business needs dictated.

(3) In February and early March 2020, claimant began experiencing financial difficulties. Claimant's "take home" earnings during this period were approximately \$1,400 per month. Transcript at 6. Claimant paid \$750 per month in rent.

(4) In early March 2020, claimant became concerned that the employer's COVID-19 safety precautions were inadequate.

(5) In early March 2020, claimant became concerned that the COVID-19 pandemic would harm the employer's business and cause claimant to lose earnings and thereby worsen his financial difficulties. Claimant did not raise these concerns with the employer. Had claimant informed the employer of his concerns, the employer would have offered to have claimant perform additional work that might make up his lost earnings such as working at the front desk or performing miscellaneous projects.

(6) On March 12, 2020, claimant reported to work for his scheduled shift but learned that his shift was canceled because it was a slow night. After claimant's March 12, 2020 shift was canceled, claimant believed that if he continued to work for the employer he would be unable to pay his rent and would become homeless.

(7) On March 13, 2020, claimant voluntarily quit working for the employer. Claimant left work because he was concerned about the adequacy of the employer's COVID-19 safety precautions. Claimant also left work because he was concerned that the employer would close or curtail operations to the extent that his resulting earnings would be not be sufficient to support himself.

(8) The employer remained open and retained their staff of servers after claimant quit.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit 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) (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.

Claimant voluntarily left work, in part, because he was concerned that the employer was not taking adequate COVID-19 safety precautions. Claimant did not establish, based on this reason, that he faced a situation of such gravity that he had no reasonable alternative but to quit. Claimant believed the employer's COVID-19 safety precautions were inadequate because on March 9 or 10, 2020, he asked his manager if there was a plan regarding COVID-19 and was told that there was not one, but that if the governor ordered a mandatory closure, the employer would close. Transcript at 6-7. In contrast, the employer's managing member presented evidence that she consulted with a doctor about safety protocols in February, implemented a set of best practices in March, and was at all times compliant with government restrictions related to COVID-19 such that the employer did not have to close. Transcript at 34-35, 53. Thus, the contrasting evidence from the parties on this point was no more than equally balanced. Where the evidence is no more than equally balanced, the party with the burden of persuasion

– here, claimant – has failed to satisfy his evidentiary burden. Claimant therefore did not meet his burden to show that, due to the employer’s COVID-19 safety precautions, he faced a situation of such gravity that he had no reasonable alternative but to quit on March 13, 2020.

Claimant also left work because he was concerned that if he continued working for the employer, his earnings would be insufficient to support himself because the COVID-19 pandemic would cause the employer to curtail operations or close. Claimant failed to establish good cause to quit on this basis. The record supports that claimant was having financial difficulties in March 2020. While claimant’s financial distress may have presented him with a grave situation, claimant did not establish good cause to quit because claimant failed to seek reasonable alternatives prior to leaving work. Prior to quitting on March 13, 2020, claimant did not notify the employer of his financial situation, nor did he pursue alternative work arrangements with the employer to determine whether he could meet his financial needs while still working for the employer. The record shows that following claimant’s departure, the employer remained open and retained their staff of servers. The record also indicates that had claimant stayed on as a server and informed the employer of his financial difficulties, the employer would have provided claimant additional work opportunities such as working at the front desk or performing miscellaneous projects. While the employer did not present these additional work opportunities as options at the time claimant quit, the record shows that the employer would have offered them to claimant had he informed the employer of his financial difficulties. Thus, claimant failed to establish good cause because he did not show that his financial condition presented him with no reasonable alternative but to quit on March 13, 2020.

To the extent claimant quit work because of a reduction in hours, claimant’s voluntary leaving implicates OAR 471-030-0038(5)(e). Under this provision, 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). At hearing, claimant asserted his belief that had he continued to work for the employer after the employer canceled his March 12, 2020 shift, he would have become homeless because he would have been unable to pay his rent. Transcript at 6. This testimony may be viewed as analogous to claimant asserting that due to a reduction in hours, his cost of working for the employer exceeded the amount of remuneration he received.

Claimant failed to establish good cause to quit under OAR 471-030-0038(5)(e). As a preliminary matter, it is not clear that evidence of a single instance of the employer canceling claimant’s shift is sufficient to establish that claimant was subject to a reduction of hours when he quit, especially given the employer’s practice of both adding and canceling claimant’s shifts as business needs dictated. In any event, claimant did not present sufficient evidence to show that at the time he quit, his cost of working, or even all his expenses, exceeded his earnings. The limited financial data in the record shows that at the time claimant quit, he expected to earn \$1,400 per month, which was more than his rent of \$750 per month. The record suggests that claimant’s concern that he would be unable to pay his rent was rooted in his fear that the employer would be required to close, which did not happen. Had claimant not quit, the employer would have retained him as a server and, as mentioned above, if claimant had informed the employer of his financial difficulties the employer would have provided other work opportunities like working the front desk or miscellaneous projects, which may have allowed claimant to make up any lost earnings.

Therefore, on this record, it is speculative to conclude that, at the time he quit, claimant's hours were reduced such that the cost of working exceeded his remuneration from the employer.

For these reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective March 8, 2020.

**DECISION:** Order No. 21-UI-158742 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service: February 19, 2021**

**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.

**NOTE:** This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

**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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 الإستئناف 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)

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