

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0116**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 4, 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 June 14, 2020 (decision # 134302). Claimant filed a timely request for hearing. On February 10, 2021, ALJ McGorrin conducted a hearing and issued Order No. 21-UI-160807, affirming decision # 134302. On February 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Advanced Security Inc. employed claimant as a security patrol supervisor from June 2018 until June 14, 2020.

(2) The employer typically scheduled claimant for 12-hour shifts, and claimant frequently worked 55–60 hours in a week. Claimant’s schedule sometimes led to sleep deprivation.

(3) From about March through June 2020, the employer scheduled claimant to work additional shifts approximately six times.

(4) On June 14, 2020, claimant received a text message from a coworker, informing claimant that the employer had scheduled him to work an additional eight-hour shift for the coming week of June 15, 2020 through June 21, 2020. Not including the additional shift, claimant had already been scheduled to work five shifts that week.

(5) On June 14, 2020, as a result of the employer’s having scheduled him for an additional shift that week, claimant voluntarily quit.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-160807 is set aside 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 his job because the employer “did not give him seven days’ notice of an eight-hour work shift on June 20, 2020, a day which claimant previously had off,” and that claimant’s “dissatisfaction with a schedule change” did not constitute a grave reason for quitting. Order No. 21-UI-160807 at 3. The record does not support this conclusion.

At hearing, claimant testified to several reasons that he quit working for the employer, including what he characterized as an “unhealthy work environment” and “multiple infractions of the law.” Transcript at 7. However, claimant also confirmed in his testimony that the final incident which led to his decision to quit was learning on June 14, 2020 that the employer had scheduled him for an additional shift on or around June 20, 2020. Transcript at 7. Claimant’s testimony appeared to identify two separate concerns regarding this issue: first, that the employer gave him inadequate notice of the schedule change, and second, that the additional shifts that claimant was working had been either causing or contributing to health issues such as sleep disturbances. Transcript at 11, 13, 19, 26. The record does not currently establish which of these concerns was the primary factor in claimant’s decision to quit. On remand, the ALJ should develop the record so as to clarify which was the primary reason that claimant quit on June 14, 2020. To the extent that claimant quit primarily due to the health effects of working long hours, further inquiry should be made as to when the sleep or other health issues began, their severity, the effects (if any) that they had on claimant’s well-being, and any attempts that claimant made to mitigate the issue prior to quitting. Further, the ALJ should inquire as to how many hours the shift prior to the additional shift was for, how much time there was between the two shifts, and what efforts, if any, claimant made to explain to the employer that he wished to work fewer hours. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

The ALJ should also note that, if the record otherwise establishes that claimant quit work for a grave reason, continuing to work while seeking other work is not a reasonable alternative to quitting. *See Hill v. Employment Dep’t.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep’t.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep’t.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep’t.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep’t.*, 256 Or App 682, 303 P3d 957 (2013).

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). At the remand hearing, the ALJ should permit claimant to fully explain his answers to the extent that they are relevant to the determination of whether he quit work for good cause. Because further development of the record is necessary for a determination of whether claimant quit work with good cause, Order No. 21-UI-160807 is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-160807 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service: March 25, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-160807 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 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.

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