

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0120**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 26, 2020 (decision # 95752). Claimant filed a timely request for hearing. On February 1, 2021, ALJ Logan conducted a hearing, and on February 3, 2021 issued Order No. 21-UI-160253, affirming the Department's decision. On February 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** At the February 1, 2021 hearing, the ALJ identified and admitted as Exhibit 1, without objection from the employer, a one-page document submitted by claimant. Transcript at 26-28. Although the order under review stated that Exhibit 1 was admitted into evidence, the document identified was not marked, which appears to be a clerical oversight. Order No. 21-UI-160253 at 1. Accordingly, the exhibit has been identified based on the ALJ's description of the exhibit, marked as Exhibit 1, and a copy provided to the parties with this decision because the employer's representative indicated the employer had not received a copy.

**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 her from offering the information during the hearing. 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. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information, such as that contained in written argument that was not considered in reaching this decision, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) Young Life Inc., a faith-based nonprofit organization, employed claimant, from August 1998 until January 31, 2020, last as an area director.

(2) The funding necessary to support claimant's local office, staffed by an administrator, staff associate and claimant, was obtained entirely by fundraising by the local office staff with assistance from local volunteers.

(3) Over time, the necessary funding for claimant's office became increasingly difficult to obtain, resulting in pay cuts for employees. Claimant's monthly salary was reduced by one-third to \$1,658 with her position funded for 86.66 hours per month or approximately 22 hours per week. Exhibit 1. However, claimant continued to work approximately 40 hours per week due to the needs of the program and because "that's what . . . [her] job description required." Transcript at 10.

(4) In early 2018, the employer hired a staff associate to undergo two years of training regarding the duties of the area director with the intent of promoting the associate to replace claimant on February 1, 2020 with an increase in pay, to which claimant agreed. However, near the end of the two years, it became apparent to the employer that the associate's training had not gone well, and the employer's regional director and local committee chairperson met with claimant and concluded that it would be preferable for claimant to remain employed after February 1, 2020 to facilitate a transition from claimant to the associate. To allow that to happen, funding efforts were intensified, but without success.

(5) After the funding efforts failed, claimant met with the regional director and local committee chairperson to discuss the situation. Because it was projected that there would be insufficient funding on February 1, 2020 to support three employees at their scheduled compensation, the employer would have been required to reduce claimant's office staff from three to two or have each employee take a pay cut. For claimant, that pay cut would have effectively reduced her base pay to approximately 15 paid hours per week for the near 40 hours per week she was working and the job required, which she concluded would not have enabled her to support her family or seek other work. After claimant discussed those issues with the regional director and committee chairperson, claimant concluded "there was no better alternative . . . than to step out..." Transcript at 11. After claimant concluded that she would quit her job, she investigated other work opportunities.

(6) January 31, 2020, was claimant's last paid day at her job. Claimant "worked for free for a little bit after that . . . to help with the transition." Transcript at 6.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-160253 is reversed and this matter remanded for further development of the record.

**Work Separation.** 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). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

At hearing, both parties asserted that claimant quit and the order under review so concluded. However, the record shows that at least two supervisors met with claimant before January 31, 2020 to discuss an apparent lack of readiness of claimant's planned replacement to assume the duties of claimant's position, and the potential need to continue claimant's employment beyond that date to facilitate the transition to a new area director. Transcript at 6, 20, 23-25; Order No. 21-UI-160253 at 2. The record also shows that claimant "worked for free" for some time after January 31, 2020 "to help with the transition," but that January 31, 2020 was the last day the employer paid claimant for her services. However, the record was not sufficiently developed to determine whether the employer was willing to allow claimant's paid employment to continue after January 31, 2020, and if or when claimant was made aware that continuing work after that date was not an option.

The record also shows that from the time claimant's paid hours were reduced from 40 to approximately 22 hours per week, claimant continued to work 40 hours or more per week due to the needs of the employer's program and because "that's what . . . [her] job description required." However, the record was not sufficiently developed to determine whether the employer required claimant to work all of the hours necessary to fulfill her job description to receive her salary, whether it was aware claimant was working 40 hours or more for approximately 22 hours of pay, whether it considered claimant an exempt, salaried employee that was not eligible for additional compensation if her work hours exceeded her paid hours, or whether it considered her an hourly employee who volunteered additional work time. The record also fails to show whether the employer changed claimant's job description when it reduced her salary, or whether it would have ended claimant's employment if and when she had chosen to eliminate or reduce her "volunteer" hours over 20 hours per week, or if and when the employer determined that claimant's replacement was sufficiently trained.

At hearing, claimant offered the employer's local committee chairperson as a witness on her behalf to "help further explain [her] situation." Transcript at 15. Claimant's witness was a participant in a meeting claimant had with him and her supervisor when the employer's alternatives for resolving the staffing situation at claimant's local office were discussed. Transcript at 11. The ALJ concluded that it was unnecessary for claimant's witness to be examined. Transcript at 17. However, under the circumstances, the record on a critical issue of claimant's work separation should have been further developed by allowing claimant's witness to testify.

Without the record being sufficiently developed in these particulars, the nature of claimant's work separation on January 31, 2020 cannot be determined.

**Discharge.** If, at the remand hearing the record shows that claimant's work separation was a discharge, the record needs to be developed to determine whether claimant's discharge was for misconduct. ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a). "[W]antonly negligent means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c). In a

discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

**Voluntary Leaving.** If at the remand hearing the record shows that claimant's work separation was a voluntary leaving, the record needs to be further developed to determine whether claimant's voluntary leaving was with or 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). "[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. 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). Per OAR 471-030-0038(5)(b), leaving work without good cause also includes:

\* \* \*

(A) Leaving suitable work to seek other work;

\* \* \*

Order No. 21-UI-160253 concluded that claimant quit without good cause under OAR 471-030-0038(4) because she failed to establish that continuing to work for paid compensation of approximately 15 hours per week created a grave situation for her and she had the reasonable alternative of continuing to work those hours while seeking other work after discontinuing the hours she worked in excess of 15. Order No. 21-UI-160253 at 3-4. The order reasoned that claimant quit work without good cause under OAR 471-030-0038(5)(b)(A) because "to the extent that claimant quit work to make it easier for her to seek other work," claimant quit suitable work in violation of that provision. Order No. 21-UI-160253 at 3. Finally, the order reasoned that claimant quit work without good cause under OAR 471-030-0038(5)(e) because to the extent claimant quit due to a possible reduction in paid hours to 15 hours per week she failed to establish that such a reduction would have substantially interfered with a return to full time work because she could have eliminated her "volunteer" hours in excess of the projected 15 hours paid and used that time to conduct a work search. Order No. 21-UI-160253 at 3.

However, even if the record developed at the remand hearing shows that claimant quit work, the record was not sufficiently developed to support the order's conclusion that claimant quit work without good cause under the cited provisions. For example, if the record shows that the employer required claimant to work all of the hours necessary to fulfill her job description to receive any compensation, even if that meant working 40 hours per week for approximately 22 hours of pay, claimant's decision to quit work may have been with good cause.

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 the nature of claimant's work separation and whether or not the work separation was disqualifying as a discharge or voluntary leaving, Order No. 21-UI-160253 is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-160253 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service: March 30, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-160253 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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