

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0138**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective April 19, 2020 (decision # 105719). Claimant filed a timely request for hearing. On February 3, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on February 5, 2021 issued Order No. 21-UI-160520, affirming decision # 105719. On February 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Salvation Army employed claimant as a receptionist at one of their shelters from January 8, 2020 to April 19, 2020.

(2) During the period of mid-January 2020 through late March 2020, claimant became ill multiple times with severe flu-like symptoms. Each bout of the illness lasted weeks.

(3) In early April 2020, following the onset of the COVID-19 pandemic, claimant again became ill with severe flu-like symptoms characterized by headaches, coughing, spitting up mucus, diarrhea, and a loss of taste. Claimant's illness caused claimant to call out sick for days at a time during the two weeks leading up to April 19, 2020.

(4) By mid-April 2020, claimant became concerned that she might have a COVID-19 infection and feared she risked spreading her illness to her coworkers and the shelter's clients. Claimant's work duties involved significant interaction with coworkers and the shelter's clients. Claimant could not perform her job in isolation or change her schedule to avoid interacting with coworkers and the shelter's clients. By mid-April 2020, some of the shelter's clients showed symptoms of an illness similar to claimant's illness.

(5) On April 19, 2020, claimant was scheduled to work but was too ill to report for her shift. Claimant's illness had caused her to exhaust all of her available vacation and sick leave. Claimant

wanted to keep working for the employer, but did not believe she could continue missing work, and was informed that the employer agreed. Claimant would have requested a leave of absence but did not know whether one was available. On April 19, 2020, claimant called the shelter's director. Claimant did not specifically inquire about a leave of absence but asked, "What should I do?" Audio Record at 18:06. The director told claimant, "I do not know." Audio Record 18:06.

(6) On April 19, 2020, after the director told claimant that she did not know what claimant should do, claimant quit working for the employer. Prior to quitting, claimant did not check with the employer's human resources (HR) personnel about whether a leave of absence was available to her.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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's illness and her concern about the risk of spreading it to her coworkers and the shelter's clients presented her with a grave situation. When claimant quit working for the employer on April 19, 2020, she was suffering from the latest bout of a recurring illness that had affected her for months and caused her to be unable to work for days at a time. Claimant's illness was characterized by severe flu-like symptoms that included headaches, coughing, and loss of taste. Claimant feared she had a COVID-19 infection, and that suspicion, though never confirmed, was not unreasonable given the similarities between the symptoms she experienced and those associated with COVID-19. Claimant's concern that she risked exposing others to harm if she continued to work while ill was reasonable. The record shows that claimant's job duties necessarily included significant interaction with coworkers and shelter clients, which meant that those individuals stood a likelihood of being exposed to claimant's illness and potentially spreading it to others. Some of the shelter's clients were ill at the time claimant quit, with symptoms similar to claimant's symptoms, lending further credence to claimant's belief that if she continued to work while she was ill she would "keep passing it on to people." Audio Record at 21:49.

Claimant's situation was of such gravity that she had no reasonable alternative but to leave work when she did. The nature of claimant's job duties were such that she could not perform her receptionist job in isolation or alter her schedule to avoid interacting with coworkers and the shelter's clients. Claimant could not use sick leave or vacation to remain employed while avoiding being at the employer's workplace because at the time claimant quit, she had exhausted all the leave available to her. Claimant wanted to keep working for the employer, but did not believe she could continue missing work, and was informed that the employer agreed.

The order under review concluded that claimant failed to pursue reasonable alternatives because claimant did not contact the employer's HR personnel to check whether a leave of absence was

available before she quit. Order No. 21-UI-160520 at 4. However, the record does not support that claimant's failure to contact the employer's HR personnel constituted a failure to pursue reasonable alternatives. The record lacks evidence that taking a leave of absence was an option available to claimant at the time that she quit. Prior to quitting on April 19, 2020, claimant called the shelter's director and asked what she should do. Although claimant did not specifically request a leave of absence, claimant's question was open-ended and logically called for the director to advise claimant of a leave of absence, if such an option had existed. Rather than advise whether a leave of absence was available, or instruct claimant to direct her inquiry to the employer's HR personnel or anyone else, the director simply stated, "I do not know."

Claimant's inquiry and the director's response were sufficient to establish that, more likely than not, taking a leave of absence was not available to claimant. Concluding that claimant may have obtained a leave of absence by contacting the employer's HR personnel therefore is speculative, at best. A speculative theory about the existence of an alternative does not amount to a reasonable alternative. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (a transfer to a different position was not a reasonable alternative where there was no evidence that such positions were available and no evidence that claimant was qualified, capable and interested in working in that position).

Claimant established that when she quit, no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant therefore voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

**DECISION:** Order No. 21-UI-160520 is set aside, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** March 26, 2021

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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.

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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**

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 الاستئناف 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  
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