

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0158**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 13, 2021, 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 July 5, 2020 (decision # 84100). Claimant filed a timely request for hearing. On February 22, 2021, ALJ Demarest conducted a hearing and issued Order No. 21-UI-161400, modifying decision # 84100 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective July 26, 2020. On March 5, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments 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 him 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).

The parties may offer new information 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) Rise Inc. employed claimant as a care provider for clients with intellectual and developmental disabilities until July 30, 2020. Claimant assisted the clients with daily tasks like making meals, getting dressed, and running errands.

(2) Claimant had cerebral palsy.

(3) Upon hiring claimant, the employer assigned claimant a primary client for whom claimant provided care. The care claimant provided this client constituted the majority of the work he performed for the employer.

(4) On June 24, 2020, the employer reassigned claimant's primary client to another care provider.<sup>1</sup>

(5) After the employer reassigned claimant's primary client, the employer continued to provide claimant with work hours, but the number of hours claimant worked for the employer decreased. The employer offered claimant a new client and allowed claimant to receive training in the employer's residential group home setting, but these opportunities did not provide as many hours per week as claimant had received previously. Claimant became concerned that he would not be able to provide for his family because of his reduced work hours and began looking for other work.

(6) The school claimant's children attended had closed due to the COVID-19 pandemic. Following June 24, 2020, the hours and days claimant could work were limited because he "had to stay home with [his] kids to help home school them." Transcript 12.

(7) July 8, 2020 was the last day claimant performed any work for the employer. On July 16, 2020, claimant tendered his resignation effective July 30, 2020. Claimant believed he had to quit to seek other work to provide for his family. Claimant quit on July 30, 2020 as planned.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-161400 is reversed and this matter is remanded for further proceedings.

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). Claimant had cerebral palsy, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment 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 includes "[l]eaving suitable work to seek other work[.]"

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<sup>1</sup> The employer reassigned the client because the employer learned that claimant had hired the client's stepparent to do some remodeling work for claimant's home, which the employer viewed as a conflict of interest.

Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes the following:

\* \* \*

(f) A person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus[.]

\* \* \*

The order under review concluded claimant quit work without good cause because he left suitable work with the employer to seek other work. Order No. 21-UI-161400 at 2. However, the record is insufficient to support the order's conclusion that claimant quit without good cause.

The record raises the issue of whether claimant quit working for the employer because he was unable to work due to having to stay home to care for his children whose school had closed because of COVID-19. The record shows that prior to claimant's voluntary leaving, claimant had to stay home to help home school his children and the hours and days claimant was able to work were limited to some degree because of this. Although claimant continued to receive some work hours after his primary client was reassigned on June 24, 2020, claimant's "last physical day working with a client or within a program" was July 8, 2020. Transcript at 19. This raises the possibility that claimant quit work on July 30, 2020 because claimant's limited availability due to having to home school his children caused the employer to offer claimant no work hours after July 8, 2020. On remand, the record should be developed as to whether claimant quit because he was unable to work the hours and days the employer offered him due to having to stay home to care for his children. To this end, the ALJ should inquire into why July 8, 2020 was the last day claimant performed work for the employer, whether the work hours the employer offered claimant conflicted with when claimant was home caring for his children, and whether claimant quit working for the employer because of any such conflict.

Remand is also necessary because the record under review does not contain a full inquiry into whether claimant quit work due to a reduction in his work hours after his primary client was reassigned on June 24, 2020. On remand, the record should be developed as to whether a reduction in claimant's work hours substantially interfered with claimant's ability to search for full time work. The ALJ should also inquire into the costs claimant incurred by working for the employer and whether those costs exceeded the amount of remuneration claimant received from the employer.

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 with

good cause due to a COVID-19 related situation, or because of a reduction in his work hours, Order No. 21-UI-161400 is reversed, and this matter is remanded for further development of the record.

**DECISION:** Order No. 21-UI-161400 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service:** April 12, 2021

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-161400 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 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**  
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