

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0173**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 10, 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 unemployment insurance benefits effective July 26, 2020 (decision # 130724). Claimant filed a timely request for hearing. On March 1, 2021, ALJ Amesbury conducted a hearing, at which the employer failed to appear, and issued Order No. 21-UI-161805, affirming decision # 130724. On March 8, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Bon Appetit Management Co. employed claimant as a catering team member from January 29, 2020 until July 30, 2020. The employer was located on a college campus.

(2) In mid-March 2020, following the onset of the COVID-19 pandemic, the college campus where the employer was located closed. The employer curtailed operations and temporarily laid claimant off work.

(3) In July mid-summer 2020, the college campus partially reopened. On July 24, 2020, the employer called claimant and informed her that the catering department would remain closed, but requested that claimant return to work working in the dining hall. Claimant stated that she would consider returning to work.

(4) On July 30, 2020, claimant responded to the employer and declined the opportunity to return to work in the dining hall. Claimant turned down the employer's request to return to work because "she didn't feel comfortable working so closely with the other students, especially because of COVID." Audio Record at 16:57. Claimant was one of her elderly parents' primary caregivers, and claimant "didn't want to put them at risk." Audio Record at 17:38.

(5) When claimant turned down the employer's request to return to work, she did not tell the employer that she believed working in the dining hall might expose her parents to additional risk, and she did not ask the employer whether they could take any precautions to make working in the dining hall safer from exposure to COVID-19. At the time claimant informed the employer she would not accept the dining hall work, a health care provider had not instructed claimant that she could not work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without good cause.

**Nature of the 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).

On July 24, 2020, the employer offered claimant an opportunity to continue to work for the employer for an additional period of time in the dining hall. Thus, continuing work was available when claimant declined the opportunity to work in the dining hall on July 30, 2020, and claimant's work separation was therefore a voluntary leaving.

**Voluntary Leaving.** 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.

However, 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:

\* \* \*

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible

risk of exposure to, or spread of, the novel coronavirus;

\* \* \*

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine[.]

Claimant did not establish good cause to quit work under OAR 471-030-0038(4). Claimant quit working for the employer because she was uncomfortable working in the dining hall and believed doing so would risk exposing her elderly parents to COVID-19. Claimant did not show that these reasons for quitting presented her with a situation so grave that she had no reasonable alternative but to leave work. The record does not show that working in the dining hall would have presented claimant or her parents with any heightened risk of exposure to COVID-19. Claimant also failed to pursue reasonable alternatives to quitting. Claimant did not inform the employer that she was concerned that working with students would cause her to risk exposing her parents to COVID-19, and she did not request that the employer take precautions that might have made working in the dining hall safer from exposure to COVID-19. The record does not show that these alternatives would have been futile, and had claimant pursued these alternatives, the employer may have addressed claimant's concerns.

Claimant also did not establish that she had good cause to quit because the circumstances of her leaving work amounted to a "COVID-19 related situation" as that term is defined by the temporary administrative rules. Claimant did not quit because a health care provider advised her to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus. The record shows that claimant's health care provider had not instructed claimant to self-quarantine or otherwise not work at the time claimant declined to return to work. Nor did claimant quit because she was unable to work due to having to stay home to care for family members who were suffering from a COVID-19 infection or were subject to a quarantine. While claimant testified that she was one of her parents' primary care givers, the record does not show that at the time she quit, she was unable to work because she had to care for her parents or that her parents were suffering from the novel coronavirus or were subject to a mandatory quarantine.

Claimant quit work without good cause and is disqualified from receiving benefits effective July 26, 2020.

**DECISION:** Order No. 21-UI-161805 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 14, 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.

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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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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