

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0204**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 124955). The employer filed a timely request for hearing. On February 22, 2021, ALJ Logan conducted a hearing, and on March 2, 2021 issued Order No. 21-UI-161890, reversing decision # 124955, and concluding that claimant quit work without good cause and was disqualified from receiving benefits effective May 3, 2020. On March 22, 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. EAB considered claimant's argument to the extent it was based on the record.

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) Century Dentistry employed claimant as a dental hygienist from November 2018 until May 5, 2020.

(2) On March 19, 2020, the governor issued an order restricting dental offices from providing non-urgent care. In compliance with this order, the employer curtailed operations to urgent care only.

(3) On April 27, 2020, the governor issued an order permitting non-urgent dental care to resume so long as dental offices comply with Oregon Health Authority (OHA) guidance. On April 29, 2020, OHA issued guidance that provided that dental offices could resume non-urgent care if they had an adequate supply of personal protective equipment (PPE) on hand, which the guidance defined as either a two-week supply of PPE or an open supply chain of PPE.

(4) Following the issuance of the governor's order and the OHA guidance, the employer began preparing the office to resume non-urgent care. On May 4, 2020, the employer held a meeting with their workers, including claimant, to discuss resumption of non-urgent care, and the status of the employer's PPE supply.

(5) Claimant believed that the employer's PPE was not adequate to resume non-urgent care. Claimant was concerned about the employer's limited number of disposable gowns, which the employer was spraying with disinfectant and reusing. The employer also had three face shields on hand, which claimant thought was an insufficient quantity because there were five workers in the dental office. Claimant also did not think the employer had any N-95 masks, which claimant believed were required.

(6) On May 5, 2020, claimant quit working for the employer because she believed the employer's PPE was not adequate and was concerned that if she continued working for the employer, she would be exposed to COVID-19 and would place her partner in danger. Claimant's partner was diabetic and at high risk for complications from COVID-19.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-161890 is reversed 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.

Claimant left work because she considered the employer's PPE on hand at the time she quit to be inadequate. Order No. 21-UI-161890 concluded that claimant lacked good cause to leave work on this basis because the quantity and type of PPE the employer had on hand at the time claimant quit did not present claimant with a situation of such gravity that she had no reasonable alternative but to leave work. Order No. 21-UI-161890 at 3-4. However, the record as developed does not support this conclusion.

At hearing, the parties disputed the adequacy of the PPE the employer had on hand at the time claimant quit. The employer asserted that they had sufficient PPE in the office and "plenty more than a two-week supply." Transcript at 21. Claimant wished to call a witness who would testify that shortly after claimant left work, the employer's workers went to a business next door and asked to borrow masks because the

employer did not have enough masks on hand. Transcript at 23. Claimant was not allowed to call this witness to testify. On remand, this witness should be allowed to testify as their testimony could be probative of the adequacy of the PPE the employer had on hand near the time that claimant left work. Any other witnesses with relevant testimony should be allowed to testify on remand as well.

Furthermore, at hearing, the ALJ asked the employer a question in which the ALJ referenced invoice documents the employer submitted as attachments to the employer's request for hearing. Transcript at 16. Claimant asked the employer questions about the invoice documents during her questioning as well. Transcript at 17, 20. The request for hearing and attached invoice documents were not marked as an exhibit or admitted into evidence. Audio Record at 6:56. The employer did not provide a copy of the invoice documents to claimant, and claimant did not have an opportunity to object to the documents or review them prior to her questioning of the employer. On remand, claimant should be provided copies of these documents in advance of the hearing, and, if the documents are offered into evidence, claimant should be afforded an opportunity to object before they are admitted.

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, Order No. 21-UI-161890 is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-161890 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service:** April 27, 2021

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-161890 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

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## 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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