

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0238**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective June 21, 2020 (decision # 91929). Claimant filed a timely request for hearing. On March 16, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on March 17, 2021 issued Order No. 21-UI-162898, affirming decision # 91929. On April 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**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. Claimant's argument contained a sworn, written declaration from a witness. Claimant offered the declaration with her written argument because the ALJ did not allow the witness to testify at hearing. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004). Some of the information in the declaration is duplicative of claimant's testimony, and claimant could have testified herself to the remaining information contained in the witness' declaration. 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.

**FINDINGS OF FACT:** (1) Stillhouse Hollow Ventures employed claimant from March 16, 2020 through June 23, 2020 as a co-manager at one of its “fast food” restaurants in Tigard, Oregon. Transcript at 5. Claimant was hired by the district manager, who was the highest-level manager claimant knew of at the employer.

(2) For the first three weeks of her employment, the district manager assigned claimant to participate in training at an employer restaurant in Hillsboro. While at the Hillsboro restaurant, claimant worked at least full time and was supervised by the Hillsboro restaurant’s general manager. The Hillsboro general manager did not permit claimant to take rest breaks. Claimant was the only employee at the restaurant that the general manager refused to give rest breaks. The restrooms were locked at the restaurant due to COVID-19, and the general manager refused on multiple occasions to give claimant the restroom key when claimant requested to use the bathroom. As a result, on one occasion, the lack of access to the bathroom forced claimant to have to urinate outside. Claimant found the incident “humiliating.” Transcript at 18. The general manager also did not permit claimant to take meal breaks free from work duties. The general manager required claimant to work “expediting” 12 drive-through windows while on her meal breaks. Transcript at 17. The employees were required to wear masks at all times due to COVID-19, but the general manager told claimant to eat her meal while she used the headset and handled customers’ food orders, instructing claimant to “take a bite and put [her] mask back on” while working. Transcript at 22.

(3) On one occasion at the Hillsboro restaurant, when claimant told the district manager that things were going “fine,” the district manager responded, “Good, don’t blow it. I took a risk hiring you at your age.” Transcript at 23. During the initial training period, claimant lost weight and often cried after work due to the emotional strain her work experiences caused her.

(4) After the initial three-week training period, claimant was assigned to work as the co-manager of the employer’s Tigard restaurant. The Tigard restaurant’s general manager became her direct supervisor. Claimant witnessed multiple problems at the restaurant that she attempted to address. Claimant saw the general manager purchasing marijuana for minor employees of the restaurant and, on multiple occasions, smoking marijuana with those employees. When claimant confronted the general manager about his conduct, he told claimant that it was “none of [her] business.” Transcript at 9. When claimant brought up the issue of employees “getting high at work,” the general manager told claimant “the kids had to get high in order to work.” Transcript at 9. When claimant told the staff not to smoke marijuana and that they needed to work, the employees refused to follow claimant’s direction, complained to the general manager, and “shunned” claimant and did not speak to her. Transcript at 26.

(5) On several occasions, claimant heard the general manager speak to minor female employees in a “sexually explicit” manner about topics including breasts. Transcript at 11. Claimant told him not to do so, and he told claimant to “mind [her] own business,” and that “him and the girls get along just fine.” Transcript at 11. A “dozen times” while claimant worked at the Tigard restaurant, the general manager spoke to claimant during her breaks about his sexual experiences. Transcript at 13. Claimant did not want to hear the general manager’s sexually explicit statements and on those occasions, claimant went back inside the restaurant to avoid the general manager.

(6) During the last month of her employment, the Tigard general manager asked claimant to clock out for him after he left for work, giving him additional work time on the clock. Claimant refused to do so. The general manager told claimant that he asked another employee to clock out for him instead.

(7) Despite the working conditions at the Tigard restaurant, claimant continued to work at the restaurant with the hope that she could improve the restaurant's performance and address and correct the problems she witnessed there. Claimant did not want to quit a job during the pandemic.

(8) The employer did not inform claimant if there was a human resources department or any other process for filing complaints. Claimant was instructed to report any workplace issues to her direct supervisor, the general manager at the Tigard restaurant.

(9) On June 22, 2020, the district manager who hired claimant visited the Tigard restaurant. He took claimant outside to speak with her. He told her that there was a problem because "no one liked her." Transcript at 7. Claimant had not received any workplace warnings before June 22, 2020, and asked the district manager why he thought the employees did not like her. Transcript at 8. The district manager said it was because claimant "enforced the rules." Transcript at 8. Claimant tried to explain that the employees disliked being told not to smoke marijuana at work. The district manager told claimant, "I knew it was a mistake hiring you at your age. You don't understand how to deal with these kids. They have to be treated differently." Transcript at 23. When claimant tried to explain the problems with the employees' conduct at the Tigard restaurant, the district manager told claimant to "shut up" and "quit arguing." Transcript at 8. Claimant tried to explain again, and the district manager told claimant that she was arguing again, and to "just shut up." Transcript at 8.

(10) At the end of the district manager's June 22, 2020 conversation with claimant, the district manager told her that he was going to send claimant back to the Hillsboro restaurant for additional training where the general manager there would "whip [her] into shape." Transcript at 9.

(11) On June 23, 2020, claimant quit work because she was not willing to return to the Hillsboro restaurant to work.

**CONCLUSIONS AND REASONS:** Claimant 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.

Order No. 21-UI-162898 concluded that claimant quit work because "her district manager told her about complaints he had received regarding her management actions, . . . was rude to her on a single occasion [on June 22, 2020] when she was insubordinate and argued with him, and because

she did not want to undergo any additional training.” Order No. 21-UI-162898 at 4. The order further concluded that to the extent claimant quit work because the district manager told her about employee complaints and was rude to her, she quit work without good cause because the district manager’s conduct did not create a grave situation for claimant. Order No. 21-UI-162898 at 4-5. The order also concluded that claimant did not have good cause to quit to avoid additional training. Order No. 21-UI-162898 at 5. However, the record shows that claimant quit work with good cause to avoid having to return to work at the Hillsboro restaurant.

Claimant quit work in response to the district manager telling her that he was “shipping [claimant] to Hillsboro” where the general manager there would “whip [her] into shape.” Transcript at 29. Although many managers might have quit due to the working conditions and mistreatment claimant experienced at the Tigard restaurant, claimant did not. She wanted to retain her job during a pandemic and was hopeful that she could improve the conditions at the restaurant. However, at the prospect of returning to the Hillsboro restaurant and the working conditions there, claimant quit. The record shows that she had good cause to quit for that reason.

Claimant left work to avoid working under the conditions at the Hillsboro restaurant where, according to claimant’s uncontested testimony, claimant was not permitted to take rest breaks or use the bathroom when necessary, and was not given meal breaks during which she was relieved from all duties. The record shows that claimant worked full time at the Hillsboro restaurant. OAR 839-020-0050(2)(a) (November 30, 2018) provides that an employer shall provide to each employee “for each work period of not less than six or more than eight hours, a meal period of not less than 30 continuous minutes during which the employee is relieved of all duties.” Additionally, OAR 839-0200050(6)(a) states that an employer shall, for each four hour segment of work, provide an employee a rest period of not less than ten continuous minutes “during which the employee is relieved of all duties.”

The record shows that the general manager at the Hillsboro restaurant repeatedly failed to provide claimant with rest and meal breaks, and that when he did allow them, claimant was not “relieved of all duties.” It appears from this record that the employer’s break practices at the Hillsboro restaurant regarding claimant were unlawful. The record does not show that the narrow exceptions to the break and meal period requirements apply here. *See* OAR 839-020-0050(3), (4), (5), (7), (6)(b). The record also shows that the failure to provide uninterrupted rest and lunch breaks was a condition that was likely to recur, and that it would have been futile for claimant to complain to the employer. The Court of Appeals has recognized that it may be good cause for a claimant to leave work, when on an ongoing basis, an employer has engaged in practices that violate Oregon wage and hour laws. *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI). The response to claimant’s multiple attempts to control lawless conduct in the workplace was at best, ignored, and at worst, met with hostility and retaliatory conduct. There is nothing in the record that would suggest that complaining to either the Tigard or Hillsboro general managers, or the district manager, would improve claimant’s working conditions. Moreover, the employer did not provide claimant with information about how to complain anywhere other than to her immediate superior, the Tigard restaurant general manager. Because claimant faced a grave situation that was likely to recur, and there was no reasonable alternative for claimant other than working in unlawful conditions, a reasonable and prudent person would not have

continued to work for the employer for an additional period of time. Claimant had no reasonable alternative but to quit work when she did.

Claimant demonstrated good cause for leaving work when she did and is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 21-UI-162898 is set aside, as outlined above.

S. Alba and D. Hettle;  
Angela Steger-Bentz, not participating.

**DATE of Service:** May 7, 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.