

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0391**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 8, 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 December 13, 2020 (decision # 133604). Claimant filed a timely request for hearing. On April 21, 2021, ALJ Frank conducted a hearing, and on April 29, 2021 issued Order No. 21-UI-165799, modifying decision # 133604 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective December 6, 2020. On May 10, 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 him from offering the information during the hearing. 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) Forest River Manufacturing LLC employed claimant as a laborer from November 2019 until December 11, 2020.

(2) By early December 2020, claimant had been tardy for work a number of times, which caused him to accumulate points that could result in disciplinary action under the employer's attendance policy. Claimant decided to request leave under the Family and Medical Leave Act (FMLA) because he understood that if the employer granted him FMLA leave, some of the points he accumulated under the attendance policy might be excused. Claimant's wife had recently had surgery and, although she was "pretty much healed" by early December 2020, claimant believed that her condition might provide a basis to obtain FMLA leave. Audio Record at 18:07.

(3) On December 4, 2020, claimant met with the employer's human resources (HR) manager, who gave claimant the paperwork he needed to make a FMLA request and asked him to complete and return it by December 17, 2020.

(4) Claimant believed that the HR manager told him during the December 4, 2020 meeting that his employment was terminated because he had accumulated too many points under the attendance policy. Claimant believed that the HR manager further told him that despite being terminated, he could keep working through December 10, 2020, and that his employment would be continued after December 10, 2020 if he turned in the completed FMLA paperwork by December 11, 2020.

(5) The HR manager did not tell claimant during the December 4, 2020 meeting that he was terminated or that he was required to return the FMLA paperwork by December 11, 2020. At the time of the meeting, claimant had accumulated 4.5 points under the employer's attendance policy. Under the employer's attendance policy, an employee may be terminated if they accumulate 5 or more points. However, termination is not guaranteed when an employee reaches 5 points.

(6) On December 10, 2020, claimant's alarm did not go off, and he slept past the beginning of his shift. Claimant did not call the employer to inform them he had overslept. Claimant did not go into work late because, due to his point accumulation, he was unsure whether he would be allowed to work. Later that day, claimant attempted to complete the FMLA paperwork, but was unsuccessful in doing so, and did not return it to the employer.

(7) On December 11, 2020, operating under the misunderstanding that he would not be allowed to work after December 10, 2020 because he had not completed and returned the FMLA paperwork, claimant did not go to work. Claimant mistakenly believed that as of "the 11th of December [his] termination would be in effect so [he] chose to accept his termination." Exhibit 1 at 4. Claimant did not return to work or otherwise contact the employer again, other than to pick up his final paycheck.

(8) On December 18, 2020, claimant returned to the employer's premises to pick up his final paycheck. Claimant told the HR manager that he had received a job offer from a different employer that same day. Following this conversation on December 18, 2020, the HR manager processed claimant's termination.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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).

At hearing, claimant testified that the HR manager informed him at the December 4, 2020 meeting that he was terminated for accumulating too many points under the attendance policy, but that he could keep working through December 10, 2020, and his employment would be continued thereafter if he submitted completed FMLA paperwork by December 11, 2020. Audio Record at 9:58 to 11:55. In contrast, the HR manager testified that the purpose of the December 4, 2020 meeting was simply to provide claimant with the FMLA forms he had requested, and that she did not inform claimant that he was terminated,

impose a December 11, 2020 deadline to return the FMLA paperwork, or make his employment contingent on returning any paperwork. Audio Record at 20:30 to 24:36. The weight of the evidence favors the employer's account, which is more logical and coherent, and for those reasons is reflected in the findings of fact of this decision.

Claimant voluntarily left work. On December 11, 2020, operating under the misunderstanding that his "termination would be in effect" because he had not returned the FMLA paperwork, claimant "chose to accept his termination," and did not return to work or otherwise contact the employer again, other than to pick up his final paycheck. Exhibit 1 at 4. This demonstrates that on December 11, 2020, claimant was not willing to continue to work for the employer for an additional period of time. The record indicates that continuing work was available on that day, as the employer did not process claimant's termination until December 18, 2020, when claimant picked up his final paycheck and advised that he had received a job offer from a different employer that same day. For these reasons, claimant's work separation was a voluntary leaving that occurred on December 11, 2020.

**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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. "Compelling family reasons" is defined, in pertinent part, under OAR 471-030-0038(1)(e) as follows:

\* \* \*

(B) The illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off[.]

Claimant quit work without good cause. Applying OAR 471-030-0038(4), claimant did not establish that his situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit. Claimant voluntarily left work on December 11, 2020 because he mistakenly believed that "his termination would be in effect" due to not having returned completed FMLA paperwork by that date. Exhibit 1 at 4. Had claimant contacted the employer before deciding to quit, he would have learned that the employer had not terminated him and that his continued employment was not contingent upon him returning the FMLA paperwork by December 11, 2020. Claimant failed to establish that, at the time he quit, no reasonable and prudent person would have continued to work for the employer for an additional period of time.

To any extent claimant quit work because of his wife's condition following surgery, the record shows that he did not do so for "compelling family reasons" as defined by OAR 471-030-0038(5)(g)(B). The record does not support that claimant quit work for compelling family reasons because claimant's wife was "pretty much healed" at the time claimant left work, and thus did not have an illness or disability that necessitated care by another. Audio Record at 18:07. The record also does not show, as required by the administrative rule, that the employer would not accommodate a time off request; the record supports that the employer would have considered and possibly granted claimant's FMLA request, had he completed and returned the FMLA paperwork.

Claimant therefore quit work without good cause and is disqualified from receiving benefits effective December 6, 2020.

**DECISION:** Order No. 21-UI-165799 is affirmed.

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

**DATE of Service: June 16, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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