

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0393**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 12, 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 September 13, 2020 (decision # 60405). Claimant filed a timely request for hearing. On May 5, 2021, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on May 6, 2021 issued Order No. 21-UI-166293, affirming decision # 60405. On May 19, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Red Barn Natural Grocery employed claimant from August 24, 2020 until September 19, 2020.

(2) Claimant worked 20 hours per week for the employer, and the employer paid claimant on the “lower end of \$12.00” per hour. Audio Record at 21:30.

(3) The employer’s store was located in an area frequented by people experiencing homelessness. Claimant was uncomfortable being around people who were homeless. On one occasion while he was taking a break outside the employer’s store, an individual living on the street approached claimant and claimant went into the employer’s store to avoid the person.

(4) The employer’s store had a problem with rats, which claimant thought created an unsanitary work environment. Claimant disliked that the store had rats and that the employer expected him to clean rat droppings as a part of his job. The employer provided claimant and other employees with appropriate cleaning materials and supplies, including protective gloves, to perform this task.

(5) In early September 2020, claimant received an offer of work from a different employer, Fred Meyer. The Fred Meyer job was contingent upon claimant’s successful completion of a background check. The Fred Meyer job was a part time position that was expected to continue. The Fred Meyer job paid \$12.70 per hour, and claimant expected to work 23 or 24 hours per week.

(6) On September 19, 2020, claimant quit working for the employer because the employer's store was located in an area frequented by people experiencing homelessness, the store had a rat problem, and claimant had been offered other work working for Fred Meyer.

(7) Claimant had a week off work between leaving the employer and attending an orientation meeting with Fred Meyer. Claimant's start date at Fred Meyer was five or six days after the orientation meeting. Claimant submitted information for his background check after the orientation meeting. Fred Meyer determined that claimant passed the background check and claimant began working for Fred Meyer on his start date.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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.

A claimant who leaves work to accept an offer of other work "has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left." OAR 471-030-0038(5)(a). In pertinent part, the Department does not consider a job offer to be definite "if [it] is contingent upon . . . [such things as] passing a drug test, background check, credit check, and/or an employer receiving a contract." Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

To the extent claimant quit work because the employer's store was located in an area where many people lived on the street or because the store had a rat problem, claimant quit work without good cause. 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 failed to offer evidence that the people living on the street near the store or the store's rat problem caused him anything other than job dissatisfaction. The record indicates that claimant was uncomfortable around people experiencing homelessness, and had felt the need to go into the employer's store on one occasion to avoid such a person, which does not amount to a grave situation. With respect to the employer's rat problem, while claimant thought it created an unsanitary situation, the record does not show that the presence of rats or cleaning rat droppings posed a risk to claimant's health or safety. Accordingly, claimant did not show these factors were of such gravity that he had no reasonable alternative but to quit.

To the extent claimant quit work to accept an offer of other work, claimant also quit work without good cause. Claimant left work with the employer, Red Barn Natural Grocery, to accept an offer of other work from Fred Meyer. The record shows that the Fred Meyer work was reasonably expected to

continue when it was offered to claimant. The weight of the evidence supports that the work at Fred Meyer (\$12.70 per hour x 23 or 24 hours per week) paid an amount greater than the work claimant left at Red Barn (“lower end of \$12” x 20 hours per week). It is more likely than not that claimant’s work at Fred Meyer began in the shortest length of time as can be deemed reasonable under the circumstances because, although claimant did not begin working for Fred Meyer until approximately 12 or 13 days after leaving the employer, the record suggests the length of this period was necessary because Fred Meyer required claimant to complete an orientation and a background check before his official start date. Despite the offered work meeting the aforementioned criteria, however, it failed to meet the requirement that the offered work be “definite.” A job offer is not definite if it is contingent upon claimant passing a background check. The offer of work for Fred Meyer was contingent upon claimant passing a background check, and was therefore not a definite offer of work when claimant quit working for the employer on September 19, 2020.

Claimant therefore quit work without good cause and is disqualified from receiving benefits effective September 13, 2020.

**DECISION:** Order No. 21-UI-166293 is affirmed.

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

**DATE of Service: June 24, 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 desisyong ito.

## 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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