

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0396**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 25, 2021, 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 benefits based on the work separation (decision # 81120). The employer filed a timely request for hearing. On April 5, 2021 and continued on April 19, 2021 and May 3, 2021, ALJ Griffin conducted a hearing, and on May 11, 2021 issued Order No. 21-UI-166558, reversing decision # 81120 and concluding that claimant quit work without good cause and was disqualified from receiving benefits effective February 16, 2020. On May 14, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Each party submitted written argument. EAB considered the employer's argument when reaching this decision. 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. 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.

Claimant asserted that the hearing proceedings were unfair or the ALJ was biased. 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).

**FINDINGS OF FACT:** (1) Lake Oswego School District employed claimant as a lunchroom worker from September 2016 until February 21, 2020.

(2) From September 2016 through May 2018, during the 2016-2017 and 2017-2018 school years, claimant worked for the employer at their middle school. Claimant had a difficult relationship with her manager at the middle school, S.M.

(3) Claimant believed that S.M.'s management style was unpredictable and created a negative work environment. S.M. sometimes added or changed work tasks without warning and made comments about claimant's work that claimant perceived as belittling. During the 2016-2017 school year, claimant worked with someone who insulted and bullied claimant, and claimant thought S.M. tolerated the coworker's treatment of claimant. During the 2017-2018 school year, S.M. required claimant to monitor the cafeteria food to deter potential theft by students and staff, which claimant believed was not part of her job description.

(4) Claimant's difficult relationship with S.M. led her to seek a transfer to the employer's high school, which the employer granted. In August 2018, claimant began working at the high school. Claimant had a different manager at the high school, whom she liked. During the 2018-2019 school year and the fall semester of the 2019-2020 school year, claimant worked at the high school under the manager that she liked. However, in mid-January 2020, claimant learned that this manager planned to retire at the end of January 2020, and that the employer had selected S.M. to replace the manager at the high school.

(5) On February 1, 2020, S.M. became claimant's manager at the high school. Soon thereafter, claimant noticed that S.M. did not order inventory in a fashion that was as systematic and orderly as claimant's former manager. Claimant also noticed that S.M. sometimes placed an insufficient amount of small bills in her till, which sometimes caused claimant the inconvenience of having to rely on other workers to break large bills. These issues made claimant concerned that "the same patterns were going to emerge" that had created a negative work environment at the junior high. April 5, 2020 Transcript at 37.

(6) One of claimant's duties was to work the lunch line intended for students who were purchasing a full meal. S.M. started requiring claimant to charge the full meal price to all students who appeared in claimant's line, including students who appeared in claimant's line with only an individual entree. Students who appeared in claimant's line with only an entrée and were charged the full meal price were entitled to the milk, juice and salad that came with the full meal, and claimant encouraged them to also grab those items, although some students declined to do so. Claimant thought charging the full meal price in that context was unethical and possibly illegal.

(7) Claimant mentioned her concerns about the practice of charging the full meal price with S.M. and S.M.'s supervisor, the food service director. The director scheduled a meeting with claimant and S.M. to discuss claimant's concerns. Claimant did not want to have the meeting because she thought it would present an opportunity for S.M. to "find a way to push [claimant] out" and replace her. April 19, 2021 Transcript at 41.

(8) Claimant decided to quit working for the employer because she thought it was illegal and unethical to charge the full meal price to all students who appeared in her line and she wished to avoid the meeting the employer scheduled to discuss her concerns about that practice. Claimant also decided to quit because she was concerned that S.M. would engage in the same conduct at the high school that had contributed to a negative work environment for claimant at the junior high.

(9) On February 5, 2021, claimant tendered her resignation by email and asked to cancel the meeting the director had scheduled, which the director agreed to do. Claimant agreed to work until February 21, 2020 and make her resignation effective that day. Claimant quit work as planned on February 21, 2020.

**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.

Claimant quit without good cause to the extent she left work because she was required to charge the full meal price to all students who appeared in her line and wished to avoid the meeting the employer scheduled to discuss her concerns about that practice. Claimant did not show how charging the full meal price to every student in her line was illegal. It also is not evident that the practice was unethical, given that the students who appeared in her line with only an entrée were entitled to the other items that came with the full meal they purchased, claimant encouraged them to grab those other items, and those that declined the other items did so voluntarily. Claimant failed to pursue reasonable alternatives because she did not go forward with the meeting to discuss her concerns about the charging practice, and quit in part in order to avoid that meeting. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not quit to avoid the meeting. Had that meeting gone forward, claimant may have been able to convince the employer to change the practice, or learned more about the charging policy and had her concerns put to rest. Claimant’s reason for avoiding the meeting was that she was concerned it would give S.M. an opportunity to “push [claimant] out” and replace her. However, claimant did not produce evidence to substantiate this concern and mere mistrust of management or an unsubstantiated suspicion that management might retaliate, without more, is insufficient to establish good cause to quit. *Bohr v. Employment Dep’t*, 155 Or. App. 520, 524-25 (1998).

Claimant also quit without good cause to the extent she quit work because she was concerned S.M. would subject her to the same treatment claimant experienced while working at the junior high. Based on S.M.’s conduct at the high school before claimant quit, claimant did not face a grave situation. Claimant was concerned that “the same patterns were going to emerge” at the high school because of S.M.’s less systematic inventory practices and failure to place small bills in claimant’s till. Viewed objectively, these do not substantiate that claimant faced a grave situation when she quit or that the treatment claimant experienced at the junior high was likely to recur had claimant continued working at the high school. Indeed, although some aspects of S.M.’s management at the junior high, such as her toleration of the coworker’s bullying of claimant, could raise concerns, much of the difficulty between claimant and S.M. at the junior high appeared to involve minor disagreements or personality conflicts, which, had they recurred at the high school, would not have constituted good cause in any event. *See Brotherton v. Morgan*, 17 Or. App. 435, 439 (1974) (“A personality conflict between an employe[e] and his immediate supervisor has been held not to constitute good cause for leaving work.”).

Claimant therefore quit work without good cause and is disqualified from receiving benefits effective February 16, 2020.

**DECISION:** Order No. 21-UI-166558 is affirmed.

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

**DATE of Service: June 18, 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.surveymoz.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 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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