

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0399**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on his work separation (decision # 135103). The employer filed a timely request for hearing. On January 28, 2021, ALJ Scott conducted a hearing, and on February 4, 2021 issued Order No. 21-UI-160333, reversing decision # 135103 and concluding claimant quit work without good cause and was disqualified from receiving benefits, effective August 30, 2020. On February 24, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

On April 2, 2021, EAB issued Appeals Board Decision 2021-EAB-0139, reversing Order No. 21-UI-160333 and remanding this case to the Office of Administrative Hearings (OAH) for further development of the record. Appeals Board Decision 2021-EAB-0139 directed the ALJ on remand to determine the median wage rate for work as a carpenter in claimant's labor market, and considering that information, whether the work claimant left was suitable under ORS 657.190 and 657.195 and whether claimant quit work with or without good cause. On April 28, 2021, ALJ Scott conducted a hearing on remand, and on April 30, 2021 issued Order No. 21-UI-165965, affirming decision # 135103 and concluding claimant quit work with good cause. On May 19, 2021, the employer filed an application for review of Order No. 21-UI-165965 with the EAB.

**FINDINGS OF FACT:** (1) Morrison Gederos LLC employed claimant as a carpenter from 2014 until August 31, 2020.

(2) In 2014, claimant began working for the employer at a wage of at \$16.00 per hour. In 2016, the employer increased claimant's wage to \$17.50 per hour. In 2018, the employer promoted claimant to lead carpenter and increased his wage to \$19.00 per hour. As a lead carpenter, claimant began supervising jobs and ordering materials for the employer. In 2020, claimant demanded an increase in pay to \$24.00 per hour because he believed that was what he deserved and asserted he would "go elsewhere" if he did not get the pay increase. Transcript at 17. In March 2020, the employer formally promoted claimant to supervisor and increased his wage to \$24.00 per hour.

(3) Claimant's wife had chronic obstructive pulmonary disease (COPD), asthma and other medical conditions, was restricted to a wheelchair, and could not drive to frequent medical appointments. Claimant's minor daughter suffered from a heart condition and was treated by a physician in Eugene, Oregon. Claimant had to drive his wife and daughter to their medical appointments and often missed work for that reason. Claimant's frequent absences from work created a problem for the employer because on days claimant missed work he was not available to supervise employees at job sites.

(4) Around June of 2020, the employer became aware of work behaviors of claimant that concerned them. On June 15, 2020, the employer gave claimant a job evaluation that described those work behaviors and told him that those behaviors "will have to be changed immediately." Exhibit 1. One of those behaviors was described as "Does not report (ask for permission to leave work early)." Exhibit 1.

(5) During the week of August 24 to August 28, 2020, claimant notified one of the employer's two owners that he was unable to be at work due to an emergency. January 28, 2021 Transcript at 6-7; Exhibit 2. The bathroom on the lower floor of claimant's residence was in need of immediate repair because it was unusable and his wife was unable to use the bathroom on an upper floor of the residence due to her medical conditions. Exhibit 3. The other owner became upset with claimant's absences that week because jobs the employer was working on needed a supervisor at the job sites.

(6) On Monday, August 31, 2020, after claimant did not report for work, the employer concluded that was "the final straw" and sent claimant a text message notifying him that it had been decided that claimant was "not able to be in a supervisor role" and that the employer had made arrangements for employer's property in claimant's possession to be picked up from his house that day. January 28, 2021 Transcript at 7; Exhibit 2. The text message also stated, "We are offering you a job at the position you were hired to do." Exhibit 2. When an employee came to claimant's residence to pick up his property, she told claimant that he had been "fired" the previous Friday. January 28, 2021 Transcript at 25. However, claimant learned that the employer intended to demote him from a supervisory position and also intended to lower his wage back to \$19 per hour. Claimant told a co-owner that "he would not come back at the lower wage." January 28, 2021 Transcript at 6. 13, 30. Thereafter, claimant did not report for work.

(7) The Department maintained data on the median wages for various types of occupations by labor market area. Based on Department data, the median wage rate for carpenters in claimant's labor market area of Coquille, Coos Bay, and the southern Oregon coast area in August of 2020 was \$22.34 per hour. The data the Department maintained did not distinguish between union and non-union wages or wages for residential and commercial construction.

(8) The employer engaged primarily in non-union, residential construction jobs in claimant's labor market area and had performed such work since 2007. Based on the employer's experience, the non-union wage rate for carpenters engaged in residential construction in claimant's labor market area of \$19 per hour was more typical than the Department's median wage rate for carpenters in claimant's labor market of \$22.34 per hour.

**CONCLUSIONS AND REASONS:** Claimant quit work without good cause.

**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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a).

Claimant asserted that he did not report to work after August 31, 2020 because he believed he had been “fired” the previous Friday because that is what an employee told him when the employer’s property was picked up from his residence on August 31, 2020. Transcript at 25. However, claimant understood that the employee in question did not have the authority to fire claimant, and the co-owner’s text message to claimant that day showed that although the employer’s intent was to demote him from a supervisor position, the employer remained willing to employ him “at the position you were hired to do,” which was as a carpenter. Claimant also told the employer that he “would not come back at the lower wage,” and did not report for work again. Because claimant could have continued to work for the employer for an additional period of time, but was unwilling to do so, the work separation was a voluntary leaving that occurred on August 31, 2020. OAR 471-030-0038(2)(a)

**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.

For purposes of applying OAR 471-030-0038(4), a claimant who leaves work due to a reduction in pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market area. The median rate of pay in the individual’s labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.” OAR 471-030-0038(5)(d). However, OAR 471-030-0038(5)(d) applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee’s earnings are reduced as a result of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). Here, because claimant’s reduction in pay was the result of claimant’s demotion from supervisor to carpenter, OAR 471-030-0038(5)(d) does not apply.

For purposes of applying OAR 471-030-0038(4), leaving work without good cause includes “[l]eaving suitable work to seek other work.” OAR 471-030-0038(5)(b)(A). Under ORS 657.190, factors to consider in determining whether any work is suitable include the “prior training, experience and prior earnings of the individual.” Under ORS 657.195, “no work is deemed suitable and benefits shall not be denied . . . to any otherwise eligible individual for refusing to accept new work . . . if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.”

Order No. 21-UI-165965 concluded that claimant quit work with good cause. The order reasoned that the Department's data showed that the median wage for carpenter work in claimant's labor market was \$22.34 per hour, and for that reason, under ORS 657.195, the employer's demotion and offer of the reduced wage of \$19.00 per hour for carpenter work was unsuitable and created a situation that was "sufficiently grave" for claimant that he had no reasonable alternative but to quit when he did. Order No. 21-UI-165965 at 3. However, the record as a whole does not support that conclusion.

Although the Department's data showed that the median wage rate for carpenters in claimant's labor market area of Coquille, Coos Bay, and the southern Oregon coast area in August of 2020 was \$22.34 per hour, the Department's witness clarified that the data did not distinguish between union and non-union wages or wages for residential and commercial construction. April 28, 2021 Transcript at 6-7. The record also shows that the employer engaged primarily in non-union, residential construction jobs in claimant's labor market area and had performed such work since 2007. April 28, 2021 Transcript at 14-15. Based on the practical experience of the employer's witness in claimant's labor market area, the non-union wage rate for carpenters engaged in residential construction in claimant's labor market area of \$19 per hour was more typical than the Department's median wage rate for carpenters in claimant's labor market of \$22.34 per hour.

Viewed objectively, the evidence in the record fails to show that the employer's offer of the reduced wage of \$19.00 per hour was "substantially less favorable" to claimant than that prevailing for similar work in the locality, as required by ORS 657.195. Accordingly, the record fails to show that under that statute, the carpenter work offered to claimant for \$19.00 per hour was "unsuitable." Nor does the record show that claimant derived any benefit from quitting work when he did and reducing his income to zero. See *Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014) (for a claimant to have good cause to voluntarily leave work, the claimant must derive some benefit for leaving work).

Claimant voluntarily quit work on August 31, 2020 without good cause and is disqualified from receiving unemployment insurance benefits effective August 30, 2020, and until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Order No. 21-UI-165965 is set aside, as outlined above.

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

**DATE of Service:** June 24, 2021

**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.

**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](https://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.

**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 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.