

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0473**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 14, 2021 (decision # 100411). Claimant filed a timely request for hearing. On June 8, 2021, ALJ Janzen conducted a hearing, and on June 9, 2021 issued Order No. 21-UI-168357, affirming decision # 100411. On June 14, 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.

In his argument, claimant also inquired about why the Department had denied his claim after the employer told the Department that they "do not protest my charges against them." Written Argument at 1. Regardless of whether the employer agreed not to contest claimant's claim or participate in the hearing, the Department and EAB are obligated by law to examine each claim for benefits to determine whether the individual is subject to disqualification because of a work separation. ORS 657.176(1), ORS 657.275(1) and (2).

**FINDINGS OF FACT:** (1) CGC Industries Inc., dba Culver Glass, employed claimant as a project manager from July 2017 until March 15, 2021.

(2) From 2017 until approximately October 2019, claimant worked for the employer as the project manager on a construction job for Nike in Beaverton, Oregon. Several times during that job, the general contractor complained about the employer's performance to the employer's chief operating officer (COO) and claimant. After receiving those complaints, the COO blamed the problems on claimant. Claimant believed the COO's criticism of him was unfair, that he had become "a punching bag," and

complained to the employer's controller, who was also their human resources manager, about the COO's actions. Transcript at 12.

(3) In late 2019, the COO removed claimant from the Nike job and he and the controller met with claimant and asked him to prepare a list of what claimant believed he could do for the company. Shortly after doing so, he received an email from the COO implying claimant was trying to take his position. Transcript at 6. Claimant later discussed the letter with the controller who told him the COO's conduct "was not appropriate." Transcript at 10. Claimant did not believe the controller intervened with the COO on his behalf.

(4) After removing claimant from the Nike job, the employer made claimant the project manager of a job at Salem Hospital in Salem, Oregon. Claimant worked on that job until March 2021. Claimant mostly worked remotely due to the COVID-19 pandemic. During the year claimant managed the Salem job, he experienced no conflicts with the COO, although claimant had at least monthly calls with him and went on fishing trips with him. Transcript 12-13.

(5) On March 12, 2021, the general manager of the employer's Salem office notified claimant that he was to report to the Portland, Oregon office for work on March 15, 2021. Claimant was surprised to receive the email from him, because claimant did not believe he was his supervisor. Claimant sent the COO an email confirming he would report to the Portland office as instructed but also asking the COO to clarify to whom he reported at the employer. Exhibit 1.

(6) On March 15, 2021, claimant reported for work at the Portland office. That morning, the COO sent claimant a response to his March 12, 2021 email. After complimenting and thanking claimant for the manner in which he managed the Salem Hospital project, he explained that claimant's position required him to perform various tasks and from that point forward claimant needed to focus on bidding and getting work for the employer's three offices. He closed his response with comments regarding the consequences if claimant was unwilling to accept the proposed changes in his job duties, and clarifying to whom claimant reported to at the employer.

(7) Claimant believed the COO's response was "inappropriate," made him feel "abused" and "was reason enough" for claimant to leave the work environment the employer had created for him. Transcript at 9, 14. Later that day, claimant resigned based on the COO's March 15, 2021 response to his March 12, 2021 email.

**CONCLUSIONS AND REASONS:** Claimant voluntary 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. In a voluntary leaving case, claimant has the

burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App. 752, 13 P3d 1027 (2000).

Claimant failed to meet his burden to establish that he left work for good cause. Although the COO's March 15, 2021 response to claimant stated the response "should make it crystal clear" to whom claimant "answered" and also stated that if claimant was unhappy with his new duties, the COO would have to make "appropriate changes," it also complimented claimant for his past work and informed him that his services were "needed." Exhibit 1, Employer March 15, 2021 letter. Some of the statements in the correspondence may have been offensive. But viewed in its entirety and considering that claimant testified "[t]here had been really no issues" during the past year, the correspondence did not show that the work environment was so "toxic," as claimant described it or created a situation of such gravity that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Transcript at 12-13; Exhibit 1, Claimant March 15, 2021 resignation email.

Nor did claimant establish that he had no reasonable alternative but to quit when he did. While claimant did not believe that complaining about the March 15, 2021 correspondence to the controller, would have changed the COO's behavior toward claimant, the record fails to show that pursuing that alternative would have been unreasonable. Although claimant believed "the controller [had] done nothing and said that, um, he's not going to change his ways" when claimant complained to her in 2019 about the COO's behavior, given the improved relationship between claimant and the COO during the year prior to his resignation, claimant may have been mistaken. Transcript at 14. On those facts, viewed objectively, the record fails to show that pursuing the alternative of complaining to the controller about the COO's offensive comments toward him on March 15, 2021 would have been futile.

For these reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective March 14, 2021 until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Order No. 21-UI-168357 is affirmed.

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

**DATE of Service:** July 22, 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 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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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