

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0509**

*Reversed ~ Revocada*  
*No Disqualification ~ No Descalificación*

**PROCEDURAL HISTORY:** On October 28, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 8, 2020 (decision # 130150). Claimant filed a timely request for hearing. On May 10, 2021 and May 26, 2021, ALJ Snyder conducted a hearing, and on June 3, 2021 issued Order No. 21-UI-168078, affirming decision # 130150. On June 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** El 28 de octubre de 2020, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin buena causa y fue descalificada de recibir beneficios de desempleo a partir del 8 de marzo de 2020 (decisión # 130150). La reclamante sometió una aplicación oportuna para una audiencia. El 10 de mayo de 2021 y el 26 de mayo de 2021, la jueza administrativa Snyder llevó a cabo una audiencia que fue interpretada al español. El 3 de junio de 2021, la jueza administrativa emitió la Orden No. 21-UI-168078, confirmando la decisión # 130150. El 22 de junio de 2021, la reclamante presentó una aplicación para revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).

**WRITTEN ARGUMENTS:** EAB considered the employer's argument in 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.

**FINDINGS OF FACT:** (1) Faces of America employed claimant until March 13, 2020 as a teachers' assistant in training.

(2) During the first week of March 2020, claimant met with the employer's director, personnel manager, and board chair to discuss a "difference" claimant was having with a teacher. May 26, 2021 Transcript at 10.

(3) On March 13, 2020, the employer announced to all teaching staff, including claimant, that due to COVID-19, the school where claimant worked would close and there would be no work until "new notice." May 10, 2021 Transcript at 5. The employer told staff that it would "keep [them] posted." May 10, 2021 Transcript at 17.

(4) The following week, the employer applied to be "an emergency center" so that it could reopen, and it reopened on a reduced capacity with ten students. The employer offered work to some staff, but did not contact claimant to return to work. The personnel manager did not call claimant to report to work because there were parents who kept their children home from school, and others who objected to having their children exposed to multiple teachers, rather than being assigned to one teacher.

(5) On June 12, 2020, claimant sent the employer's director a text message asking for "a letter saying that you laid me off because of the COVID." Exhibit 2 at 12. On June 13, 2020, the employer's accountant sent claimant a letter by email complying with claimant's request. Exhibit 2 at 13.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, but not for misconduct. *El empleador despidió a la reclamante, pero no por mala conducta.*

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

The parties offered conflicting testimony regarding whether claimant quit work or was discharged. Despite the conflicting and sometimes inconsistent testimony, the order under review apparently found the employer's testimony persuasive and concluded that because claimant could have continued to work for the employer after March 13, 2020, and chose not to do so, the work separation was a quit and not a discharge. Order No. 21-UI-168078 at 3. However, the preponderance of the persuasive evidence shows that claimant was discharged from work on March 13, 2020 due to a COVID-19 related situation.

A comparison of the employer's inconsistent testimony with the claimant's consistent, logical testimony shows that the work separation was a discharge. The employer's director and personnel manager testified that at a meeting during the first week of March 2020, claimant stated that she planned to quit work to travel to Mexico to address a personal matter there, and that the employer understood claimant to be giving a two-week notice that she intended to quit. May 10, 2021 Transcript at 13; May 26, 2021 Transcript at 10-11. However, the employer's witness testimony was inconsistent, and therefore less persuasive, because the personnel manager also testified that the employer did not call claimant after

March 13, 2020 because there were parents who removed their children from the school, and others who did not want their children exposed to multiple staff members. May 26, 2021 Transcript at 10-11. Claimant testified consistently that she did not discuss leaving work with the employer or say that she had to go to Mexico, and that the employer laid claimant off work when it closed due to COVID-19, and did not contact claimant to return to work when it reopened<sup>1</sup>. May 10, 2021 Transcript at 5, 9. In addition, the employer's director and accountant agreed to provide claimant with a letter stating that the employer laid claimant off work due to COVID-19. Based on the employer's inconsistent testimony and willingness to provide claimant a letter stating that it laid claimant off work due to COVID-19, the weight of the evidence shows that the employer discharged claimant, and furthermore, that it discharged claimant due to a COVID-19 related situation.

**Discharge.** ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (September 22, 2020). "[W]antonly negligent" means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c). In a discharge case, the employer has the burden to establish misconduct by a preponderance of evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(a) (effective March 8, 2020 through September 12, 2020) provides that an individual who is discharged from work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes the following:

\* \* \*

(d) A person is unable to work because their employer has ceased or curtailed operations due to the novel coronavirus, including closures or curtailments based on the direction or advice of the Governor or of public health officials[.]

\* \* \*

The order under review concluded that claimant quit work without good cause. Order No. 21-UI-168078 at 4. However, because claimant was discharged, the employer had the burden to show that claimant was discharged for misconduct. It is undisputed in the record that on March 13, 2020, the employer announced to all of its employees that due to the COVID-19 pandemic, the school was closing. The record does not show that the employer's reason for offering work to other staff instead of claimant was attributable to anything other than its need to reduce staff for its remaining ten students, whose parents

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<sup>1</sup> In October 2020, claimant worked "a few days" for the employer as a substitute for a teacher, but the record does not show that work was part of the same employment relationship that ended on March 13, 2020. May 10, 2021 Transcript at 7.

preferred that their students not be exposed to multiple staff. More likely than not, the employer discharged claimant on March 13, 2020 because it curtailed its operations due to COVID-19 rather than due to any willful or wantonly negligent conduct attributable to claimant as misconduct. Therefore, because claimant was discharged from work because of a COVID-19 related situation, she is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 21-UI-168078 is set aside, as outlined above. *La Orden de la Audiencia 21-UI-168078 se deja a un lado, de acuerdo a lo indicado arriba.*

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

**DATE of Service: July 30, 2021**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

*NOTA: Esta decisión revoca una orden judicial que negó beneficios. Por favor tenga en cuenta que, si le deben beneficios, el Departamento puede tomar aproximadamente una semana para pagar esos beneficios.*

**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. 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.

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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



# 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  
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