

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0517**

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

**PROCEDURAL HISTORY:** On March 16, 2021, 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 October 4, 2020 (decision # 91336). Claimant filed a timely request for hearing. On June 7, 2021, ALJ Amesbury conducted a hearing that was interpreted in Spanish, and on June 9, 2021, issued Order No. 21-UI-168411, affirming decision # 91336. On June 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** *El 16 de marzo de 2021, el Departamento de Empleo de Oregón (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 4 de octubre de 2020 (decisión # 91336). La reclamante sometió una aplicación oportuna para una audiencia. El 7 de junio de 2021, el juez administrativo Amesbury llevó a cabo una audiencia que fue interpretada al español, y el 9 de junio de 2021, emitió la Orden No. 21- UI-168411, confirmando la decisión # 91336. El 28 de junio de 2021, el reclamante presentó una aplicación para revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) Independent Transport LLC was a staffing agency that employed workers to complete temporary work assignments for their clients.

(2) The employer employed claimant to complete a temporary work assignment sorting onions for one of the employer's clients from August 26, 2020 to October 6, 2020.

(3) At the end of claimant's shift on October 6, 2020, the employer's foreman told claimant and the other workers working on the onion sorting assignment that they had completed the work assignment. The foreman told claimant the employer would contact her again in the future if it had another work assignment to offer claimant.

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

**Nature of the Work Separation.** The first issue is 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 date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a). In the case of individuals working for temporary agencies, the employment relationship shall be deemed severed at the time that a work assignment ends. OAR 471-030-0038(1)(a).

Order No. 21-UI-168411 concluded that claimant quit work with the employer, but the record does not support that conclusion. 21-UI-168411 at 3-4. The order relied on the employer's testimony where it conflicted with claimant's testimony, reasoning that the employer's testimony was "believable" and based on personnel records, and that claimant showed "apparent difficulty in recalling sequences of events and dates." Order No. 21-UI-168411 at 4. EAB rejects the order's finding that claimant's testimony was less credible than the employer's testimony. Claimant's testimony was consistent, clear and plausible. Conversely, the employer's testimony was almost entirely based on personnel records authored by an individual who did not testify. Moreover, the hearsay testimony from the employer's human resources representative primarily pertained to alleged offers of work that occurred after the work separation relevant in this matter. Those offers of work were irrelevant to the work separation in this matter because they occurred after the employment relationship was severed.

The employer, a temporary agency, employed claimant to complete a temporary work assignment sorting onions. On October 6, 2020, claimant completed the onion sorting assignment; the assignment ended at that time. For purposes of unemployment insurance benefits, claimant's employment relationship also ended at that time. At the time the onion sorting assignment ended, no continuing work was available to claimant in the onion sorting assignment. Claimant therefore did not quit work. The work separation was a discharge.

The employer alleged that they offered claimant additional work assignments after October 6, 2020, and that claimant refused those work assignments. Transcript at 17-25. Even if those allegations were true, it would not change the outcome of this decision. This decision is limited to the work separation that occurred when the onion sorting assignment ended on October 6, 2020.

**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). 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).

Claimant's discharge occurred because her onion sorting assignment ended on October 6, 2020. The end of a temporary job assignment is not attributable to claimant as a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her or a disregard of the employer's interests. Claimant therefore is not disqualified from receiving unemployment insurance benefits based on the October 6, 2020 work separation.

**DECISION:** Order No. 21-UI-168411 is set aside, as outlined above. *La Orden de la Audiencia 21-UI-168411 se deja a un lado, de acuerdo a lo indicado arriba.*

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

**DATE of Service: August 5, 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.

**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.

*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 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 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)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.