

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0592**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 125803). On October 28, 2020, decision # 125803 became final without claimant having filed a request for hearing. On December 3, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on December 10, 2020 issued Order No. 20-UI-157505, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 24, 2020. On December 24, 2020, claimant filed a timely response to the appellant questionnaire.

On January 7, 2021, the Office of Administrative Hearings (OAH) mailed claimant a notice vacating Order No. 20-UI-157505, and on June 24, 2021 served notice of a hearing scheduled for July 6, 2021 at 10:45 a.m. on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 125803. On July 6, 2021, ALJ Ramey conducted a hearing, and on July 9, 2021 issued Order No. 21-UI-170085, allowing claimant's late request for hearing and reversing decision # 125803 by concluding that the employer discharged claimant, not for misconduct, which did not disqualify claimant from receiving benefits. On July 23, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**. The remainder of this decision addresses the portions of the order concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits.

**FINDINGS OF FACT:** (1) McDonalds of Central Oregon employed claimant as a crew member from May 15, 2020 until June 4, 2020.

(2) In late May 2020, claimant's wife, who also worked at the employer's restaurant, was scheduled for a surgery to occur on June 9, 2020. The doctor advised that claimant and his wife quarantine for one week prior to her surgery to avoid the risk of claimant's wife contracting COVID-19. The doctor was concerned about the wife's potential exposure to COVID-19 before the surgery because contracting the virus could cause complications and threaten her general health.

(3) On May 29, 2020, claimant and his wife made a request to their manager for leaves of absences for both claimant and his wife beginning June 2, 2020. The manager conveyed the leave request for claimant's wife to the employer's human resources supervisor, who called claimant's wife on May 29, 2020 and granted her leave of absence request effective that day. The leave request for claimant was not conveyed to the employer's human resources supervisor. Rather, the manager told claimant and his wife that the employer would consider claimant's leave request. On or about June 2, 2020, the manager informed claimant and his wife that claimant's leave request was denied.

(4) On June 2, 2020, claimant worked his scheduled shift. On June 4, 2020, claimant was scheduled to work but went to the employer's restaurant two hours before his shift and got his paycheck. Thereafter, claimant decided he had to quarantine "[i]n light of the COVID-19 pandemic" and his wife's upcoming surgery, and did not report for his shift on June 4, 2020 or either of his other scheduled shifts on June 5 and 6, 2020. Transcript at 16.

(5) The employer tried to contact claimant to inquire about his status on June 4, 5, and 6, 2020, and when those efforts were unsuccessful considered claimant to have quit work and did not schedule him to work any additional shifts. On June 12, 2020, claimant went to the employer's business office, returned his work uniforms, and obtained his final paycheck.

**CONCLUSIONS AND REASONS:** Claimant quit work with good cause.

**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) (December 23, 2018). 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).

The preponderance of the evidence shows that claimant voluntarily left work on June 4, 2020. Continuing work was available on June 4, 2020 because the employer scheduled claimant to work that day. The record supports that claimant was unwilling to continue working on June 4, 2020 because, rather than work, he decided to quarantine beginning that day due to his wife's upcoming surgery. At hearing, claimant testified that he stopped working because his wife's surgery "call[ed] for quarantine" and "[i]n light of the COVID-19 pandemic I had to quarantine." Transcript at 16. That claimant likely became unwilling to continue working on June 4, 2020 is bolstered by evidence that the employer had denied his request for leave to quarantine days earlier on or about June 2, 2020. Because the record shows that, more likely than not, claimant could have continued to work for the employer for an additional period of time but was unwilling to do so when he started to quarantine beginning on June 4, 2020, the work separation was a voluntary leaving that occurred on June 4, 2020.

**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.

Claimant established that no reasonable and prudent person in his situation would have continued to work for the employer for an additional period of time. Claimant faced a grave situation in that his wife’s doctor had advised that claimant quarantine for his wife’s health and safety prior to her June 9, 2020 surgery but claimant was unable to do so because of his work for the employer. The record shows that claimant requested time off from work in order to accommodate his need to quarantine but the employer denied claimant’s request. Accordingly, claimant had no reasonable alternative but to leave work when he did.

Claimant therefore quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 21-UI-170085 is affirmed.

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

**DATE of Service:** August 26, 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.

**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 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)

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.