

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0675**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 10, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 83028). The employer filed a timely request for hearing. On August 11, 2021, ALJ Mott conducted a hearing, and on August 12, 2021 issued Order No. 21-UI-172423 concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 12, 2020. On August 19, 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 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) Fred Meyer Stores, Inc. employed claimant as a worker in their Starbucks coffee kiosk from August 2019 until April 13, 2020.

(2) In March 2020, claimant became concerned that the employer's response to the COVID-19 pandemic at the store at which she worked increased her risk for contracting COVID-19, which threatened her health. The employer remained open for business, and at that time did not require employees or customers to wear facemasks or provide facemasks for employees to wear. The employer posted a six-foot social distancing requirement for employees and customers, but claimant observed that it was not enforced and that maintaining a six-foot distance from customers and coworkers was impossible or difficult, especially in the small coffee kiosk in which she worked and the small employee break room.

(3) Claimant was concerned about the effects contracting COVID-19 would have on her own health, as well as the health of her mother. Claimant lived with her mother, who was a smoker and had contracted pneumonia twice in the past. Claimant believed that the effect of having contracted pneumonia twice before left her mother's lungs "scarred," and her mother more likely to require hospitalization if she contracted COVID-19 from claimant. Transcript at 7-8. Claimant was unaware if her mother had a diagnosed health condition or had discussed with her health provider the risks to her health if she contracted COVID-19.

(4) On March 30, 2020, claimant was working in the kiosk, when her manager asked her to work at the register because the manager did not want to risk exposure to COVID-19 by interacting with customers. Claimant was upset by her manager's request, which she viewed as shifting an increased risk of getting sick to her. At the end of her shift, claimant contacted the store manager and discussed her COVID-19-related work safety concerns with him. At the end of their discussion, the store manager told claimant that he understood her concerns and offered claimant two weeks of unpaid "COVID leave," which the employer had just implemented. Transcript at 5. Claimant accepted the offer for COVID leave. The store manager directed claimant to contact the human resources office to process the leave request, which claimant did. Claimant was the first employee at the store at which she worked to go on COVID leave. Neither the store manager nor human resources representative informed claimant about any alternatives to going on leave. Claimant was unaware that any such alternatives existed.

(5) On April 13, 2020, at the end of her two weeks of leave, claimant contacted the same human resources representative who had processed her leave request and asked her if the employer had made any policy changes regarding the COVID-19 pandemic, specifically including requiring employees to wear masks or providing masks to employees. Because the representative told claimant that no such changes had been made, claimant informed her that she was quitting for that reason. The human resources representative did not inform claimant of any alternatives to quitting, such as taking an open-ended COVID leave, or changing work locations, shifts or positions to limit contact with customers. Claimant was unaware that any such alternatives existed.

(6) On April 13, 2020, claimant had not contracted COVID-19, was not subject to a mandatory or recommended quarantine related to COVID-19, and did not have to care for a family member or another person due to COVID-19.

(7) After April 13, 2020, the employer began requiring employees and customers to wear facemasks, and providing facemasks for employees to wear.

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

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)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits 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:

- (a) A person is unable to work because they are ill with the novel coronavirus;
- (b) A person is unable to work because they have been potentially exposed to the novel coronavirus and have been subjected to a mandatory quarantine period;
- (c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;
- (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;
- (e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine; [and]

\* \* \*

- (g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Order No. 21-UI-172423 concluded that claimant quit work without good cause, reasoning that claimant did not establish that she quit work because of a COVID-19 related situation under OAR 471-030-0070(1) and (2)(b). Order No. 21-UI-172423 at 3. The order also reasoned that claimant did not establish that she quit work with good cause under OAR 471-030-0038(4) because, although her situation was grave, she did not show that there were no reasonable available alternatives to quitting such as taking an open-ended leave of absence or asking to modify her work duties to limit her contact with customers. Order No. 21-UI-172423 at 3-4.

The record supports the order's conclusion that claimant did not establish that she quit work because of a COVID-19 related situation under OAR 471-030-0070(1) and (2)(b). The employer remained open for business after the COVID-19 pandemic started and claimant was able to work. Although claimant was concerned about the health risks associated with COVID-19 to both herself and her mother, the record fails to show that she was ill, subject to a mandatory or recommended quarantine, or was required to stay home to care for her mother or another person who was ill or subject to a mandatory quarantine.

The record also supports the order's conclusion that when claimant quit work, her situation was grave. Although the COVID-19 pandemic was underway, the employer did not require that its customers or employees wear facemasks and the record shows that the social distancing requirements that it had posted were neither sufficient nor effectively enforced. Under those conditions, claimant was understandably concerned about her increased risk of contracting COVID-19 and passing it on to her mother, who claimant believed to be at a higher risk of hospitalization if she were to contract COVID-19.

However, the record fails to show that claimant had reasonable alternatives to quitting when she did. Claimant understandably felt unsafe about the employer's response to the COVID-19 pandemic and her resulting working conditions, and took the reasonable step of speaking to her store manager about her concerns. The only alternative the manager and human resources representative offered claimant to protect her health was two weeks of unpaid COVID leave, which claimant accepted. Even after claimant discussed her concerns with the same human resources representative after the two weeks of leave, the representative did not inform claimant about any alternatives to quitting that may have addressed claimant's concerns about her exposure to COVID-19 at work. The record fails to show that claimant was ever aware that the employer was granting employees open-ended COVID leave, or changes to their work locations, shifts or positions to limit their contact with customers. The employer witness who testified about those possible alternatives asserted that she was not the human resources representative who spoke to claimant during her employment. Transcript at 15-16. *See Early v. Employment Dep't.*, 274 Or. App. 321, 360 P.3d 725 (2015) (claimant told the employer why she was quitting and the employer offered her no alternatives, "implicitly suggesting that there was none," leaving claimant with no reasonable alternative but to leave work).

Nor does the record show that taking an open-ended COVID leave or changing her work location, shift or position would have been a reasonable alternatives for claimant even if she had been told about them, based on what claimant knew when she quit. An open-ended COVID leave would have been unpaid and indefinite, and claimant would reasonably have presumed that the leave would be lengthy given that the employer had not yet required customers or coworkers to wear masks, provided masks to employees, or effectively enforced social distancing within the store and work and break areas. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension). Similarly, because the employer had not yet required customers or coworkers to wear masks, provided masks to employees, or effectively enforced social distancing within the store and work and break areas, changing her work location, shift or position likely would not have resolved claimant's concerns about contracting COVID-19, and would have been futile alternatives to quitting.

For these reasons, claimant quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 21-UI-172423 is set aside, as outlined above.

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

**DATE of Service: September 28, 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.

**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.surveymzmo.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 desisyong ito.

## 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)

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