

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0696**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 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 August 2, 2020 (decision # 81924). On January 19, 2021, decision # 81924 became final without claimant having filed a request for hearing. On February 1, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 17, 2021 issued Order No. 21-UI-161056, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 3, 2021. On March 3, 2021, claimant filed a timely response to the appellant questionnaire, and on March 30, 2021 the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-161056 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing would be allowed and, if so, the merits of decision # 81924. On April 14, 2021, ALJ Monroe conducted the hearing, at which the employer failed to appear, and on April 16, 2021 issued Order No. 21-UI-165045, allowing claimant's late request for hearing and reversing decision # 81924 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation.

On April 22, 2021, the employer filed a timely request to reopen the April 14, 2021 hearing. On July 13, 2021, OAH mailed notice of a hearing scheduled for August 3, 2021 at 3:30 p.m. to consider the employer's request to reopen the April 14, 2021 hearing, and if allowed, the merits of decision # 81924. On August 3, 2021, ALJ Monroe conducted a hearing, and on August 11, 2021 issued Order No. 21-UI-172399, allowing the employer's request to reopen the April 14, 2021 hearing and affirming decision # 81924 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective August 2, 2020. On August 27, 2021, claimant filed an application for review of Order No. 21-UI-172399 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 the employer's request to reopen the April 14, 2021 hearing is

**adopted.** The remainder of this decision relates to the portion of the order under review that concluded that claimant voluntarily quit work without good cause.

**WRITTEN ARGUMENT:** EAB considered the employer's written argument when 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) Oregon Horse Rescue employed claimant as a barn manager and coordinator of volunteers from July 22, 2019 until August 7, 2020. The employer was a non-profit horse sanctuary owned and operated by a married couple, J.K. and D.K.

(2) Beginning in or around October 2019, claimant developed the view that conditions on the employer's ranch were hazardous. Claimant also disagreed with some of the employer's practices regarding their horses. On one occasion, in order to "avoid needless trauma to the former owner," the employer was not candid to a former owner about the cause of a horse's death, which claimant thought was illegal. August 3, 2021 Transcript at 25.

(3) Claimant also thought J.K. "was very volatile and unprofessional." April 14, 2021 Audio Record at 35:07. Claimant observed J.K. sometimes yell at her husband, D.K., in an abusive manner. J.K. once sent claimant a text, which claimant considered "near-threatening," in which J.K. complained about claimant's barking dog. April 14, 2021 Audio Record at 47:44. On one occasion, J.K. discussed suing a former volunteer who had left a negative review of the employer on a website, which claimant found intimidating.

(4) In June 2020, while J.K. and D.K. were out of town, claimant was alone on the property walking a horse on a pathway that was adjacent to a ditch, when the horse got stuck in the ditch. Claimant tried calling J.K. and D.K. and the handyman whom they had instructed claimant to call in case of an emergency, but could not get through to any of them for assistance. Claimant struggled to get the horse out of the ditch but succeeded in doing so after an hour with the help of her boyfriend. In July 2020, claimant and J.K. were working in the barn together when J.K. parked her ATV in a manner that caused a horse to knock claimant down.

(5) On July 7, 2020, the employer reassigned work tasks from claimant to J.K., which resulted in claimant working fewer hours per week. Claimant went from working 40 or more hours per week to working 16 hours or fewer per week. Claimant earned \$16 per hour and her weekly cost to commute to work was \$45 to \$50 per week. Claimant also incurred miscellaneous weekly working expenses of approximately \$42 per week.

(6) On August 6, 2020, the employer's other employee informed claimant that she had quit. Claimant was concerned about being the employer's sole remaining employee because it would mean she would have to work extensively with J.K. On the morning of Friday, August 7, 2020, claimant called D.K. to

express her concerns. As the two started talking, D.K. received another call, placed claimant on hold, and accidentally hung up on claimant. D.K. then texted claimant and asked if he could call back to continue the discussion that afternoon or possibly the following Tuesday. Claimant sent a response text that informed D.K. that she was quitting.

**CONCLUSIONS AND REASONS:** Claimant quit 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) (December 23, 2018). “[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. A claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e).

At the hearings in this case, claimant offered a variety of reasons for quitting work on August 7, 2020. The record shows that claimant’s decision to quit was motivated by four principal factors: (1) the prospect of claimant having to work extensively with J.K. after the other employee quit, (2) working conditions on the employer’s ranch, (3) aspects of the employer’s treatment of horses that claimant disagreed with or thought were illegal, and (4) the reduction in claimant’s hours. The record reflects that the evidence of claimant and the employer on these issues often differed, and when it did, was no more than equally balanced. Where the evidence in the record is no more than equally balanced, the party with the burden of persuasion—here, claimant—fails to meet their evidentiary burden. Consequently, EAB based its findings on the employer’s evidence as to the facts in dispute in this case.

The record indicates that the main reason claimant quit work was because she was concerned, due to the employer’s other employee having quit, that she would have to begin working extensively with J.K., whom she considered “volatile and unprofessional.” April 14, 2021 Audio Record at 35:07. Claimant did not show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit based on this reason. The record shows that J.K. sometimes spoke to D.K. in an abusive manner, openly discussed suing a former volunteer, and had once sent claimant a text complaining about her barking dog. While this evidence may show that J.K. had a demanding personality or was unpleasant to work with, it does not establish that J.K. had subjected claimant to oppression or unreasonable behavior such that the prospect of claimant working extensively with J.K. presented claimant with a grave situation. Claimant therefore did not establish good cause to quit based on this reason.

Another reason claimant quit work was that she considered the working conditions on the employer’s horse ranch to be hazardous. At hearing, the parties differed on this point in multiple respects. Claimant testified that the employer frequently left her alone on the property without support. April 14, 2021 Audio Record at 43:21. D.K. acknowledged claimant often worked alone but testified that it was

“standard industry practice” for a single employee to do horse care chores by themselves. August 3, 2021 Transcript at 25. Claimant also testified that the employer made her do “hard labor” by unloading heavy bales of hay when the hay unloading crew did not show up. April 14, 2021 Audio Record at 43:28. D.K. testified that the employer never required claimant to unload the 150-pound bales for which the hay unloading crew was responsible but that handling 50-pound bales was part of claimant’s regular duty and she never indicated she could not do the regular duties of a ranch hand. August 3, 2021 Transcript at 26, 29. Claimant also stated that the employer failed to repair a ditch next to a pathway for walking horses, which caused a horse claimant was walking to get stuck in the ditch. April 14, 2021 Audio Record at 44:43. D.K. testified that the ditch was installed to reduce mud on the pathway for the benefit of the horses, the pathway was “constrained by geography” and could not be made wider, and that no other employee or volunteer had trouble preventing horses from getting stuck in the ditch. August 3, 2021 Transcript at 28. Claimant further stated that there was inadequate lighting on a road to the horse pasture, that claimant had to drive a “dilapidated” truck to get there, and that the pasture was too muddy and had excessive amounts of horse manure in it. April 14, 2021 Audio Record at 43:43. D.K. countered that it was customary for roads and pastures on horse ranches to be unlit, that the muddiness and presence of horse manure were inherent features of operating a horse ranch in western Oregon, and that the truck was old but in working condition. August 3, 2021 Transcript at 27-28, 38.

This recitation of the disputed evidence shows that the employer either rebutted or credibly explained most of the assertions made by claimant about hazardous working conditions. There remains unrebutted evidence related to working conditions that the employer failed to respond to claimant’s telephone calls for assistance on the occasion that the horse got stuck in the ditch, and that J.K once parked her ATV in a manner that caused a horse to knock claimant down. Viewed objectively, however, this unrebutted evidence does not show that working conditions on the employer’s ranch were such that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant therefore did not establish good cause to quit based on this reason.

Next, to the extent claimant quit because she disagreed with or considered illegal some of the employer’s practices regarding their horses, claimant did not meet her burden to establish good cause. Claimant testified that she believed the employer buried deceased horses on the property too close to pastures where horses grazed, that the employer sometimes dumped feed bags in the barn in a manner that prevented the door from closing and could thereby allow horses to get out and injure themselves, and that the employer had asked her “to lie to” the previous owner of a horse about the cause of the horse’s death. April 14, 2021 Audio Record at 47:01, 51:31. D.K. testified that the employer’s treatment of the horses was praised by the employer’s veterinarians and the local animal services agency. August 3, 2021 Transcript at 14. D.K. additionally testified that the feed room door was always closed other than on one or two occasions when feed bags may have prevented its closure. August 16, 2021 Transcript at 16. D.K. also stated that burying deceased horses on property was a standard industry practice and that the employer’s veterinarians endorsed the practice. August 3, 2021 Transcript at 15. D.K. acknowledged not being candid on one occasion with a former owner about the cause of a horse’s death but did so in order to avoid “needless trauma” because the employer thought the former owner’s “mental state was not up to the hard facts.” August 3, 2021 Transcript at 25. Here, the record is no more than equally balanced and therefore EAB accepts the employer’s version of events as to the points upon which the parties disagree. Although the employer conceded that the feed bags may have been placed such that the feed door was open on one or two occasions and that the employer was less than frank on one occasion about the cause of a horse’s death, these do not constitute good cause to quit work. With

respect to the former point, the record does not show that claimant was presented with a grave situation by virtue of the fact that the feed door was open on one or two occasions. With respect to the latter, the record suggests that the employer's lack of candor toward the former owner about the horse's cause of death was well intentioned and did not present claimant with a situation of such gravity that she had no reasonable alternative but to leave work.

Finally, to the extent claimant quit because the employer reduced her hours from 40 or more per week to 16 hours or fewer per week beginning July 7, 2020, claimant did not show that she quit work with good cause. While claimant states in her written argument that the reduction of her hours was "in no way . . . the reason for [her] quitting," this decision will address it in the interest of completeness because the fact that claimant's hours were reduced was a prominent feature of claimant's testimony in this case. Claimant's Written Argument at 2; April 14, 2021 Audio Record at 33:21; August 3, 2021 Transcript at 43-44. Although the parties agreed that claimant's hours had been reduced, they disagreed regarding the extent of the reduction, with claimant testifying they were reduced to eight hours per week and the employer asserting that the figure was closer to 16 hours per week. April 14, 2021 Audio Record at 33:21; August 3, 2021 Transcript at 20. Claimant did not establish good cause to quit on this basis because she did not show that continuing to work would substantially interfere with her return to full time work or that the cost of working exceeded the amount of remuneration she received from the employer. As to claimant's cost of working, the record shows that claimant earned \$16 per hour and her costs of commuting to work were \$45 to \$50 per week. Even assuming, as claimant asserted, that claimant worked no more than 8 hours per week after July 7, 2020, her weekly earnings ( $\$16 \times 8 = \$128$ ) exceeded her \$45 to \$50 per week in commuting costs. Claimant additionally asserted at hearing that over the course of her approximately year-long employment, her costs of working also included \$2,180 in food expenses, replacing boots, and the like. August 3, 2021 Transcript at 43-44. Including these costs in claimant's cost of working does not change the result. If this figure is converted from an annual figure to a weekly amount by dividing it by 52, the expense comes to approximately \$42 per week, which when added to claimant's \$45 to \$50 per week in commuting costs, is still exceeded by \$128, the amount of claimant's weekly earnings when working eight hours per week. For these reasons, claimant did not establish good cause to quit based on a reduction of hours.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective August 2, 2020.

**DECISION:** Order No. 21-UI-172399 is affirmed.

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

**DATE of Service: October 4, 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.

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# 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**

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**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**  
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