

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0730**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective April 19, 2020 based on the work separation (decision # 94216). On December 28, 2020, decision # 94216 became final without claimant having filed a request for hearing. On January 13, 2021, claimant filed a late request for hearing on decision # 94216. ALJ Kangas considered claimant's request, and on January 27, 2021 issued Order No. 21-UI-159851, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 10, 2021. On February 1, 2021, claimant filed a timely response to the appellant questionnaire.

On March 2, 2021, the Department served notice of an amended administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective April 19, 2020 based on the work separation (decision # 81214).<sup>1</sup> Claimant filed a timely request for hearing. On September 2, 2021, ALJ Mott conducted a hearing interpreted in Vietnamese, at which the employer failed to appear, and issued Order No. 21-UI-173966, affirming decision # 81214.<sup>2</sup> On September 7, 2021, claimant filed an application for review of Order No. 21-UI-173966 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or

<sup>1</sup> Decision # 81214 amended the Department's findings in support of its conclusion.

<sup>2</sup> Order No. 21-UI-173966 stated that it affirmed the administrative decision mailed to claimant on "December 8, 2020." Order No. 21-UI-173966 at 3. Because the order under review states in its "History of the Case" that the relevant administrative decision was issued "March 2, 2021," and that date was confirmed during the hearing, the order under review's reference to "December 8, 2020" is assumed to be a typographical error and should be March 2, 2021. Order No. 21-UI-173966 at 1; Audio Record at 08:06.

circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Aerotek, Inc. (the employer) provided temporary job placement services for claimant. Claimant had a temporary job placement at the employer's client, Hydra-Power Systems (HPS), from December 2019 to April 23, 2020 as a computer numerical control machinist.

(2) During claimant's placement with HPS, HPS implemented COVID-19 safety protocols. However, claimant and his coworkers sat close to each other and it was common for claimant's coworkers to forget to wear their masks. Claimant was concerned about the effectiveness of HPS's protocols because he lived with his elderly parents and did not want to potentially expose them to COVID-19 if claimant was exposed to the virus at work.

(3) HPS informed claimant that they would hire him as a permanent HPS employee after claimant had worked "400 and something hours" with HPS. Transcript at 6. As a permanent HPS employee, claimant would become an employee of HPS and no longer perform temporary work for HPS, nor be an employee of Aerotek, Inc. As a permanent HPS employee, claimant would be eligible to receive benefits that he did not receive from the employer, including medical insurance, paid vacation, and a 401(k) plan. Claimant considered the opportunity to become a permanent HPS employee desirable because of these benefits and because it would provide him with job stability.

(4) After claimant had performed 720 hours of work, HPS informed him that they were not going to hire him as a permanent HPS employee due to COVID-19. HPS told claimant that he could continue to work for HPS as a temporary job placement. Claimant did not ask HPS why COVID-19 prevented them from hiring him as a permanent employee, nor did he ask whether they might change their decision in the future. Claimant gave the employer and HPS notice that he planned to quit work, and voluntarily left his employment because he wanted a stable income, and because he was concerned about exposing his parents to COVID-19. If HPS had hired claimant as a permanent employee, claimant would have been willing to continue working at HPS despite his concerns about COVID-19.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit working for the employer 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.

Claimant failed to show that he had good cause to leave work. Claimant was understandably disappointed when HPS chose not to hire him as their permanent employee despite claimant meeting,

and even exceeding, the hours required to attain permanent employee status. However, the record shows that HPS made this decision due to the impact of COVID-19 and that despite failing to hire claimant as a permanent employee, claimant's temporary job placement with HPS would have continued. Likewise, to the extent claimant was disappointed over not having access to the job benefits he would have received had he been hired as a permanent HPS employee, the record shows that claimant did not improve his job situation by quitting when continuing work was available. In light of this evidence, HPS's failure to hire claimant as a permanent employee was not a reason of such gravity that a reasonable and prudent person of normal sensitivity in claimant's position would have left work with the employer rather than continuing to work as a temporary employee with HPS. Furthermore, the record shows that claimant's concerns about bringing COVID-19 home to his parents did not present a reason of such gravity that claimant had no reasonable alternative but to leave work given that claimant testified that he would have remained with HPS, notwithstanding his COVID-19 concerns, if HPS had hired him. Transcript at 9. As such, claimant has failed to show that he faced a grave situation at HPS such that any reasonable person in claimant's position would have left work with HPS and the employer.

Even if claimant had demonstrated that he faced a grave situation at HPS, he failed to show that he had no reasonable alternatives but to leave work. The record shows that claimant never asked HPS why COVID-19 prevented HPS from offering claimant permanent employment, or whether HPS would revisit their decision again in the future. Had claimant asked, he might have learned if, when, and under what circumstances he might become a permanent HPS employee in the future. Likewise, instead of quitting when he did, claimant had the reasonable alternative of asking the employer if they had a placement with a different client that might potentially become a permanent position. Because the preponderance of the evidence shows that claimant had reasonable alternatives to quitting work when he did, claimant failed to demonstrate that he quit work with good cause and he is therefore disqualified from receiving unemployment insurance benefits based on his work separation.

**DECISION:** Order No. 21-UI-173966 is affirmed.

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

**DATE of Service: October 13, 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](https://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 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**  
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