

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0753**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 22, 2020, 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 (decision # 93034). The employer filed a timely request for hearing. On August 6, 2021, ALJ Wyatt conducted a hearing at which claimant appeared, and continued the hearing to allow for additional testimony. On August 9, 2021, the Office of Administrative Hearings (OAH) mailed the parties notice of a continued hearing scheduled for August 20, 2021 at 9:30 a.m. On August 20, 2021, ALJ Wyatt convened the continued hearing, at which claimant failed to appear, and on August 30, 2021 issued Order No. 21-UI-173677, reversing decision # 93034 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective June 21, 2020. On September 20, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant requested a reopening of the August 20, 2021 hearing based on her failure to appear at that hearing so that she could “have a full hearing, with a fair outcome rather than a decision based on partial information.” Claimant’s request at 1. However, claimant appeared and testified at the hearing on August 6, 2021. Although the employer’s representative appeared at the August 20, 2021 hearing, the employer’s representative stated at the outset that the employer “elected not to provide any testimony and just rely on the claimant’s testimony [from the August 6, 2021 hearing] only,” and offered not additional evidence. Audio Record at 1:18. OAR 471-040-0040(1)(a) (February 10, 2012) provides, in relevant part, that a party may request the reopening of a hearing if the party failed to appear at the hearing. *See also* OAR 471-040-0040(6) and OAR 471-041-0060(4)-(5) (May 13, 2019). Because claimant appeared at the first hearing on August 6, 2021, claimant did not “fail to appear” for purposes of OAR 471-040-0040 or OAR 471-041-0060

Claimant’s request therefore is instead construed as a request for the consideration of additional evidence under OAR 471-041-0090(1)(b) (May 13, 2019). OAR 471-041-0090(1)(b) allows for the consideration of additional evidence upon a showing that the new information is relevant and material, and that factors and circumstances beyond the party’s reasonable control prevented the party from

offering the additional evidence into the hearing record. Claimant failed to show that additional evidence would be relevant and material because claimant fully testified at the August 6, 2021 hearing, the employer offered no additional evidence at the August 20, 2021 hearing, and claimant did not state what additional evidence, if any, she would have offered into the record at the continued hearing.

Claimant also failed to show that it was beyond her reasonable control to participate in the continued hearing and offer additional evidence into the hearing record at that time. At the conclusion of the August 6, 2021 hearing, claimant agreed to August 20, 2021 at 9:30 a.m. as the date and time for the continued hearing, and the ALJ stated that a new hearing notice would be sent to the parties. August 6, 2021 Transcript at 36-37. On August 9, 2021, OAH mailed the parties notice that the continued hearing was scheduled for August 20, 2021 at 9:30 a.m., as had been agreed. Claimant asserted that she did not receive the August 9, 2021 notice in the mail due to issues with the forwarding of her mail, recalled the August 20, 2021 hearing date, and decided to rely upon her memory “that the [hearing] was going to be at 2:00 pm.” Claimant’s request at 1. However, it was within claimant’s reasonable control to have accurately recorded that the hearing would start at 9:30 a.m. It also was within claimant’s reasonable control to confirm the hearing date and time by making contact with OAH in the days leading up to August 20, 2021.

Because claimant failed to show that additional evidence would be relevant and material, and that it was beyond claimant’s reasonable control to have offered additional evidence into the hearing record, her request for the consideration of additional evidence is denied.

EAB considered the employer’s written argument when reaching this decision.

**FINDINGS OF FACT:** (1) St. Mary’s of Medford employed claimant as a seventh grade history teacher until June 24, 2020. Claimant’s tenure at the school included academic years (AY) 2016-2017, 2017-2018, 2018-2019, and 2019-2020.

(2) During AY 2016-2017 through AY 2018-2019, claimant experienced multiple instances of intellectual property (IP) theft from both her personal computer and the computer provided to her by the employer. The employer’s information technology professional believed that someone from outside the employer must have breached the employer’s computer system to take claimant’s IP, but claimant believed this explanation was false and that the employer had committed the computer break-ins and stolen her IP. Claimant also was the victim of numerous break-ins at her personal residence where the perpetrator(s) would “go[ ] through [her] school things,” which led claimant to believe that the employer was involved. August 6, 2021 Transcript at 14. Claimant reported the residential break-ins to the police, but the police took no action.

(3) During Spring Break of AY 2018-2019, claimant had become “fed up” with her situation, which she viewed as “toxic,” and provided the employer notice of her intent to leave at the conclusion of the following school year, AY 2019-2020. Transcript at 6, 16. Claimant decided to remain through AY 2019-2020 because she had been responsible for the recruitment of multiple Indonesian students to the employer’s school and felt an obligation to remain until their graduation. Claimant worked through AY 2019-2020 and quit work as planned on June 24, 2020.

**CONCLUSIONS AND REASONS:** Claimant voluntarily 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) (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.

Claimant failed to show that she had good cause to leave work when she did. The record shows that claimant left work on June 24, 2020 because she believed that during AY 2016-2017 through AY 2018-2019 the employer had been responsible for multiple break-ins at claimant’s personal residence and for multiple instances of computer-related IP theft from claimant’s personal and work computers. However, claimant failed to show by a preponderance of the evidence that the employer had any connection to the break-ins or IP theft. Absent such a showing, claimant failed to establish that the reason she quit work was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have quit, especially since claimant continued working for the employer for over a year after break-ins and IP theft occurred.

Claimant therefore quit work without good cause and is disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

**DECISION:** Order No. 21-UI-173677 is affirmed.

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

**DATE of Service: October 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](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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