

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0868**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving unemployment insurance benefits effective April 18, 2021 (decision # 101053). Claimant filed a timely request for hearing. On October 19, 2021, ALJ Mott conducted a hearing at which the employer failed to appear, and on October 20, 2021 issued Order No. 21-UI-177578, affirming decision # 101053. On October 25, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of information included with claimant's written argument, is necessary to complete the record under OAR 471-041-0090(1)(a), and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) Petco Animal Supplies Stores, Inc. employed claimant from April 2018 until April 24, 2021. Claimant worked at the employer's store in Beaverton, Oregon, most recently as their merchandising leader, and was paid \$17.50 per hour for 36 to 40 hours of work per week.

(2) In March 2021, claimant became engaged to marry her partner. Claimant's partner owned a home in Birkenfeld, Oregon, where he had resided for about three years. The home of claimant's partner was located about 76 miles from the employer's store in Beaverton. Claimant subsequently determined that it would be more practical and cost-effective to move in with her partner than to maintain separate residences and make a 152-mile daily round-trip commute to work. By claimant's estimates, claimant

and her partner would save approximately \$2,000 per month if she moved in with him. EAB Exhibit 1. Thereafter, claimant began to look for work closer to Birkenfeld.

(3) On or around April 10, 2021, claimant received an offer of employment from a coffee shop near her partner's home. The job was to pay \$12.00 per hour, and was intended to be a permanent position for 32 hours per week. The following week, claimant accepted the offer from the coffee shop and gave the employer notice that she intended to quit work on April 24, 2021.

(4) On April 24, 2021, claimant voluntarily quit working for the employer in order to move to Birkenfeld and live with her partner. On April 26, 2021, claimant moved to Birkenfeld and began working at the coffee shop. On May 31, 2021, claimant married her partner.

(5) When claimant filed her initial claim for unemployment insurance benefits, claimant's weekly benefit amount was established as \$458.00.

**CONCLUSIONS AND REASONS:** Claimant voluntarily 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.

The order under review concluded that claimant "left work in order to accept new work and to move in with her fiancé in another town," and that she did not have good cause to leave work because she did not satisfy the requirements of OAR 471-030-0038(5)(a).<sup>1</sup> Order No. 21-UI-177578 at 2-3. The order under review also concluded that, to the extent that claimant voluntarily quit in order to live with her partner, she did not do so for good cause because her circumstances did not constitute a "compelling family reason" under OAR 471-030-0038(5)(g).<sup>2</sup> Order No. 21-UI-177578 at 3. Although these conclusions are correct, the record nevertheless shows that claimant voluntarily quit work for good cause under OAR 471-030-0038(4) because her situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work, and claimant had no reasonable alternative.

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<sup>1</sup> OAR 471-030-0038(5)(a) establishes guidelines for what constitutes good cause for quitting to accept an offer of other work, including such factors as the rate of pay offered by the new employer, and whether the offer is definite.

<sup>2</sup> In relevant part, a "compelling family reason" that constitutes good cause for voluntarily quitting includes the need to accompany the individual's spouse or domestic partner to a place from which it is impractical for such individual to commute and due to a change in location of the spouse's or domestic partner's employment. OAR 471-030-0038(5)(g); OAR 471-030-0038(1)(e).

Claimant voluntarily quit work in order to move in with her partner, whom she married shortly thereafter. Although claimant's decision to move to Birkenfeld on April 26, 2021 was apparently timed to coincide with the start of her new job at the coffee shop, it is reasonable to conclude that claimant's primary motivation for moving—and therefore for quitting work—was her desire to live with her partner. It is generally reasonable that an individual would wish to share a home with their domestic partner, rather than living 76 miles away, particularly when continuing to maintain a separate residence near the employer's premises would—as in claimant's case—cost the individual approximately two thirds of their gross pay.<sup>3</sup> A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, therefore would left work if they had no reasonable alternative.

The record shows that claimant had no reasonable alternative but to quit work. 76 miles is not a reasonable commuting distance, and as such, a reasonable and prudent person would not move in with their partner and commit to a daily round-trip commute of 152 miles. There is also no evidence in the record to suggest that claimant could have transferred to another of the employer's locations within a reasonable commuting distance of her partner's home, or continued to work for the employer remotely.

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

**DECISION:** Order No. 21-UI-177578 is set aside, as outlined above.

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

**DATE of Service: November 30, 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.

**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.

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<sup>3</sup> Assuming that claimant worked a full 40 hours per week for the employer, claimant earned approximately \$3,033 in gross monthly pay.



# 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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