

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0936**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 71331). The employer filed a timely request for hearing. On October 20, 2021, ALJ Kaneshiro conducted a hearing, and on October 21, 2021 issued Order No. 21-UI-177735, reversing decision # 71331 and concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective January 24, 2021. On November 9, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her 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 circumstances beyond claimant's reasonable control prevented her 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) ILC In Linneas Care LLC employed claimant as a personal support worker from June 29, 2020 to February 23, 2021. Claimant's job responsibilities included providing housekeeping, companionship, and personal care for "K", a client of the employer who had Down syndrome and Alzheimer's, and who lived at home with her elderly mother ("K's mother"). K's mother was "a collector / hoarder of items" and K's home was "cluttered with stacks of items, papers and boxes . . ." Exhibit 1 at 6. Claimant's housekeeping duties for K were necessary, in part, "to keep the home safe" for K. Transcript at 38.

(2) In November 2020, claimant decided to clean out the three freezers in K's home, which "were in bad shape," because they were stuffed with "rotten and expired and smelling" meat. Exhibit 1 at 8; Transcript at 9. Claimant also decided to clean the garage floor where K's mother had left rotten meat that could not fit into the freezers. Because there was not enough space in the available garbage bins to accommodate all of the meat, claimant asked K's neighbor if she could use two of the neighbor's

garbage bins to accommodate the overflow. The neighbor agreed. Claimant did not ask K's mother, who was sick at the time, for permission before seeking the neighbor's help. K's mother became upset when she was later charged \$44.17 for the two extra bins of garbage. K's mother believed that claimant should reimburse her for those funds.

(3) On January 29, 2021, K's mother became upset at claimant after she was unable to find three trays in the home and believed that claimant was responsible for their disappearance. Claimant perceived that K's mother had accused her of stealing the trays, which was "the last straw" for claimant, who believed that "things were just going to continue to get worse" in the home. Transcript at 14. Claimant finished her shift and K's mother, who had the authority to discharge claimant, told claimant not to come back until she called claimant back to work. K's mother believed that claimant should replace the missing trays, and reimburse her for the garbage bin fees. Claimant told K's mother she would not return to work until K's mother apologized to her.

(4) Between January 29, 2021 and February 23, 2021, the employer's owner tried to facilitate a reconciliation between K's mother and claimant because claimant's relationship with the client had spanned ten years, and had generally been a good relationship. The employer's owner offered to claimant to pay the extra garbage fees to get claimant to return to work with the client. Claimant responded to the offer by telling the owner that she would consider it, but that claimant still wanted K's mother to apologize. K's mother was not willing to apologize to claimant despite her knowledge that K missed claimant's companionship, and even though K's mother wished the incident with claimant had never happened.

(5) On February 23, 2021, claimant sent an email to the employer's owner stating that claimant was unwilling to return to K's home. Claimant did not return to work for the employer.

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

**Nature of the work separation.** The first issue is the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The record evidence shows that near the conclusion of claimant's shift on January 29, 2021, a conflict developed between claimant and K's mother that resulted in a stalemate between the two with K's mother telling claimant she was not to return to work until contacted by K's mother, and with claimant telling K's mother she would not return to work until K's mother apologized to claimant. Although K's mother had the authority to discharge claimant, the preponderance of the evidence shows that K's mother recognized claimant's positive impact on K and wished that her conflict with claimant had never happened. Likewise, the employer did not want to discharge claimant and attempted to facilitate a reconciliation between claimant and K's mother because, from the employer's perspective, a reconciliation was in the best interest of K. The employer offered to claimant to reimburse K's mother for the garbage bin fees in furtherance of the reconciliation effort, and claimant remained open to reconciliation. However, K's mother was unwilling to apologize to claimant, and on February 23, 2021,

claimant sent an email to the employer stating that she would no longer work in K's home. In light of these circumstances, the preponderance of the evidence demonstrates that the nature of the work separation was a voluntary leaving by claimant that occurred as a result of claimant's February 23, 2021 email to the employer.

**Voluntary quit.** 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). "[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 quit work without good cause because the only reason she refrained from returning to work in K's home was that K's mother would not apologize, and the lack of an apology from K's mother was not a reason of such gravity that claimant had no reasonable alternative but to quit work. Order No. 21-UI-177735 at 3. The order under review reasoned that claimant had the reasonable alternative of speaking with K's mother directly about her concerns, but did not do so. Order No. 21-UI-17735 at 3. The record does not support this conclusion.

The record shows that claimant's work responsibilities included keeping K's home environment safe, which included housekeeping in the home. Further, the preponderance of the evidence shows that claimant reasonably believed that she needed to remove the meat products from the home for the safety of K. While reasonable minds could differ over claimant's decision to dispose of the expired meat products by placing them in borrowed garbage bins, the preponderance of the evidence shows that in doing so, claimant was trying to meet her obligation to keep the home safe for K. Furthermore, to the extent claimant's efforts resulted in excess garbage bin charges for K's mother, the record demonstrates that the harm to K's mother was minimal because the employer's owner was willing to pay the charges to maintain the long-term positive relationship between claimant and K in exchange for an apology from K's mother to claimant.

The preponderance of the evidence shows that claimant's actions were motivated by her concern for K and her desire to serve K's best interests. The unwillingness of K's mother to consider an apology to claimant despite her knowledge of claimant's positive relationship with her daughter, and the record evidence suggesting the disappearance of the trays might have been due to any number of reasons, including the "cluttered" nature of the home, showed that the relationship between claimant and K's mother was irretrievably broken. Moreover, the unlikelihood of repairing the relationship and the evidence suggesting that the continued conflict was not in the best interests of K, were reasons of such gravity that no reasonable person of normal sensitivity would have felt they had any reasonable alternative but to leave work. Furthermore, the unwillingness of K's mother to cooperate with any reconciliation attempt that did not involve claimant's repayment of the \$44.17, even though the owner was willing to repay the amount in an effort to remedy the dispute, demonstrates that any further communication between claimant and K's mother would have been futile.

As such, claimant voluntarily quit work with good cause and is therefore not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 21-UI-177735 is set aside, as outlined above.

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

**DATE of Service: December 15, 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](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**  
 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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