

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1024**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective July 18, 2021 (decision # 81842). Claimant filed a timely request for hearing. On November 22, 2021, ALJ Blam-Linville conducted a hearing at which the employer failed to appear, and on November 24, 2021 issued Order No. 21-UI-180491, affirming decision # 81842. On November 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Evraz Oregon Steel employed claimant as a crane operator at their steel production facility from June 20, 2021 to July 20, 2021.

(2) Soon after claimant began working for the employer, he developed concerns about safety conditions at the employer's facility. A major feature of claimant's job was to use a crane to move heavy steel plates off the production line and into a stack. The crane used vacuum pads to lift the plates. Claimant noticed that several of the pads on his crane were damaged, which caused him to sometimes drop the plates as he was stacking them. Within the first few weeks of claimant's employment, he dropped two plates. After the first dropped plate, claimant suggested replacing the damaged pads, but his general supervisor told him not to do so because some of the pads on the crane still worked and replacing the damaged pads would be expensive. Claimant also asked his trainer and the general supervisor about reporting the dropped plate to the employer but they did not report the incidents.

(3) In late June 2021, claimant's floor supervisor instructed claimant to extinguish a fire on the production line. Claimant had not received training on putting out fires and did not think it was part of his job requirements. The floor supervisor told claimant to use a water hose to extinguish the fire but when claimant attempted to use a nearby hose, he discovered that the hose was broken. Claimant was informed "to just use bottled water[]" to put out the fire, and to use a fire extinguisher only as a last resort. Transcript at 17. Claimant used a case of bottled water to put out the fire. Afterward, claimant asked his floor supervisor whether he should report the incident to the employer but was told not to do so.

(4) In early July 2021, claimant's trainer told claimant to use a different crane to move a group of steel plates in the stack. Using this crane required claimant to stand on the group of plates while he attached the crane to them. Claimant saw that the plate he would have to stand on had come off the production line without sufficient time to cool and was still hot. Claimant asked the trainer whether the plate was too hot to walk on but the trainer insisted that he do so. Claimant complied, but lost his balance and almost fell onto the plate, which would have burned him severely. After claimant regained his balance, the trainer, who was a member of the employer's safety committee, laughed and said, "that's how you know it's too hot to walk on." Transcript at 13. Claimant asked whether the incident should be reported to the employer but the trainer said, "don't worry about it." Transcript at 14.

(5) After the incident in which claimant almost fell on the hot steel plate, he had two or three more incidents where he dropped plates while using the crane with the damaged vacuum pads. Safety conditions at the employer's facility began to make claimant "fear for [his] life," and he requested a meeting with the employer's Human Resources (H.R.) department to discuss his concerns. Transcript at 6.

(6) The H.R. department invited claimant to attend a meeting for new hires. Claimant attended the meeting and mentioned the safety issues he had experienced including that the crane he operated had damaged vacuum pads. The employer's director of H.R., who led the meeting, told claimant "it's always safety first" and that he should replace all the damaged pads on the crane. Transcript at 9.

(7) After the H.R. meeting concluded, claimant went to the crane and began replacing the damaged pads. Claimant's general supervisor approached claimant and asked what he was doing. Claimant informed the supervisor that the H.R. director had told him he should replace all the damaged pads on the crane. The supervisor told claimant to replace only half of the damaged pads because it would be too expensive to replace them all.

(8) Claimant thought that the crane would remain unsafe to operate without replacing all the damaged pads. Claimant viewed the general supervisor's instruction that he replace only half of the damaged pads as the "last straw," and he decided to quit working for the employer. Transcript at 9. Shortly thereafter, claimant tendered a resignation letter to the employer notifying them that he was quitting effective July 20, 2021 because of his safety concerns. Claimant quit work on July 20, 2021 as stated in the letter.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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 quit work without good cause because although his situation was grave, he failed to pursue reasonable alternatives to leaving work. Order No. 21-UI-180491 at 3-4. The record does support the order's conclusion that claimant's situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit if there were no reasonable alternative. However, the record does not support the order's finding that claimant failed to pursue reasonable alternatives to leaving work before quitting.

The record shows that the employer required claimant to use equipment that was in disrepair and to undertake dangerous tasks without sufficient safety precautions or training, which posed a risk of injury or death to claimant and others. Specifically, claimant was required to use a crane with damaged vacuum pads that resulted in him dropping heavy steel plates numerous times, he was instructed to extinguish a production line fire using bottled water and without training, and he was required by his trainer to stand on a hot plate upon which he nearly fell and burned himself severely. The record further shows that after claimant nearly fell on the hot plate, the trainer, who was a member of the employer's safety committee, laughed and said, "that's how you know it's too hot to walk on." Transcript at 13. Moreover, after the H.R. director told claimant he should replace all the damaged pads on the crane, and claimant attempted to do so, claimant's general supervisor refused to allow all of the damaged pads to be replaced. Therefore, more likely than not, the dangerous condition presented by the damaged vacuum pads on the crane would have persisted. The record therefore establishes that claimant's situation was such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work if there were no reasonable alternative.

The record also shows that claimant pursued reasonable alternatives prior to quitting work, to no avail. When claimant dropped plates in the first few weeks of his employment, he suggested replacing the damaged pads on the crane and asked about reporting the dropped plates to the employer. However, his general supervisor told him not to replace the pads and the dropped plate incidents were not reported. Claimant also inquired about reporting the incident in which he put out a fire with bottled water and the incident in which he nearly fell on the hot plate, but was told not to do so and not to "worry about it" by his floor supervisor and trainer in those instances, respectively. Transcript at 14. These facts show that claimant made reasonable efforts to improve safety conditions at the employer's facility without success.

When these efforts were unsuccessful, claimant tried to address his safety concerns by escalating them to the employer's H.R. department. While claimant received assurances from the H.R. director that safety was paramount, the preponderance of the evidence shows that relying on H.R. to improve safety conditions within a reasonable period of time likely would have been futile. This is because after the H.R. director informed claimant that he should replace all the damaged pads on the crane, claimant's general supervisor refused to allow claimant to do so, even though claimant informed the supervisor that the H.R. director had told him to replace all the damaged pads. Because relying on H.R. to address claimant's safety concerns within a reasonable period of time likely would have been futile, the record establishes that claimant had no reasonable alternative but to quit work when he did.

Claimant therefore quit working for the employer with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 21-UI-180491 is set aside, as outlined above.

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

**DATE of Service: January 7, 2022**

**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 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 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  
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