

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1047**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective January 3, 2021 (decision # 121227). Claimant filed a timely request for hearing. On November 19, 2021, ALJ Toth conducted a hearing at which the employer failed to appear, and on November 22, 2021 issued Order No. 21-UI-180271, affirming decision # 121227. On December 2, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**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 a four-page letter, dated May 9, 2021, which claimant enclosed with her request for hearing. This evidence is necessary to complete the record under OAR 471-041-0090(1)(a), as the record indicates that conclusions in the order under review relied, in part, on information contained in the letter rather than claimant's testimony. *See* Order No. 21-UI-180271 at 1. The letter 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) Neptune Management Corp. employed claimant as a sales representative from December 21, 2020 until January 7, 2021. Claimant was hired to sell cremation services for the employer by making cold sales calls to potential customers.

(2) During claimant's new-hire training period, claimant learned that her supervisor expected her to use a script during sales pitches which claimant felt amounted to "guilting and shaming the person into buying the service." Audio Record at 9:58. The script included "... asking [customers] if they had children, and if they loved their children then they would purchase the full cremation package." EAB Exhibit 1 at 2. Claimant was uncomfortable with this sales tactic because her "... belief system [did] not

agree with guilt/shamming [sic] someone into purchasing a product or service.” EAB Exhibit 1 at 2. Additionally, claimant was uncomfortable with the employer’s requirement that she make sales calls from 5 p.m. to 8 p.m. on Thursday evenings because she felt that “a persons [sic] privacy at home in the evenings should [not] be interrupted by a sales call.” EAB Exhibit 1 at 1.

(3) On January 6, 2021, the first day that claimant was expected to make sales calls on her own, claimant was unable to complete any sales calls due to her anxiety over using the script. Claimant’s misgivings about the sales script caused her anxiety to the point that she experienced “jitters, cold sweat, and not being able to speak” when she attempted to use the script in a sales call. Audio Record at 12:41. Claimant did not ask her supervisor if she could proceed to make sales calls without use of the script because her supervisor had created the script and felt that it was a “great idea,” and claimant did not believe that the supervisor would not understand claimant’s concerns. Audio Record at 15:43.

(4) The employer supplied each of their sales representatives with an iPad to use in sales presentations. If a sales representative did not meet their sales quota, the employer would charge the representative \$500 for the iPad. As of January 6, 2021, the employer had not yet issued claimant an iPad because she had just finished her training period. However, claimant believed that she would not be able to meet her sales quota because of her inability to use the employer’s script, and she was unable to afford the potential \$500 charge for the iPad if she was unable to meet her quota.

(5) On January 7, 2021, due to her concerns about the employer’s sales script and her inability to pay the employer for the iPad if she was unable to meet the sales quota, claimant voluntarily quit work. The employer had no other positions that claimant could have transferred to instead of quitting.

**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.

Claimant voluntarily quit work because of her discomfort with using the employer’s sales script—which prevented her from being able to complete sales calls—and her concerns that she would be unable to afford to pay for the employer-issued iPad if she could not meet her sales quota. The order under review concluded that claimant’s discomfort with the sales script did not constitute a grave reason for quitting. Order No. 21-UI-180271 at 3. The record does not support this conclusion.

Claimant’s discomfort with the sales script was the result of being asked to engage in behavior which would violate her “belief system” by “shaming” customers into purchasing cremation services. Factors to consider when determining whether work is “suitable” for an individual include, in pertinent part, “the degree of risk involved to the health, safety and morals of the individual, the physical fitness and

prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.” ORS 657.190. The record shows that the employer’s requirement that claimant use the provided sales script would have violated her morals, and therefore, under ORS 657.190, the job was likely unsuitable for claimant. In fact, claimant was unable to actually complete the work assigned to her because of her discomfort with the use of the script.

Further, in light of the fact that claimant was unable to actually complete the work, her concern that she would be required to repay the employer for the iPad that they would eventually issue to her—and that she would be likewise unable to afford to repay them—was reasonable under the circumstances. The order under review concluded that this did not “amount to a grave condition” because the employer had not yet issued the iPad to claimant. Order No. 21-UI-180271 at 3. However, there is no indication in the record that the employer might not have eventually issued the iPad to claimant—only that they had not yet done so. If the issuance of the iPad was, as the record suggests, certain to occur, the harm that claimant feared—her inability to pay for it—was inevitable if she continued to work for the employer.

A reasonable and prudent person would not continue to work in an unsuitable position, particularly where the anxiety caused by that violation of their beliefs would have made completing the work impossible, and where failing to complete the work would have actually cost them money that they could not afford to pay. Therefore, claimant quit work for a grave reason. Additionally, claimant had no reasonable alternative but to leave work. For instance, while claimant did not ask her supervisor if she could proceed with sales calls without using the supplied script, the record does not suggest that the supervisor would have been willing to allow this. Likewise, because the employer had no other positions available, claimant could not have transferred to another position in lieu of quitting. Before finding that claimant failed to consider reasonable alternatives to leaving work, it must be found that such alternatives existed. *Fisher v. Employment Dept.*, 139 Or App 320, 911 P2d 975 (1996). Because the record does not show that any reasonable alternatives to quitting were available to claimant, claimant voluntarily quit work for a reason of such gravity that she had no alternative but to quit.

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

**DECISION:** Order No. 21-UI-180271 is set aside, as outlined above.

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

**DATE of Service: January 10, 2022**

**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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# 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 الاستئناف 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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