

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1061**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 13, 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 May 9, 2021 (decision # 133552). Claimant filed a timely request for hearing. On November 15, 2021 and December 2, 2021, ALJ Lucas conducted a hearing, and on December 6, 2021 issued Order No. 21-UI-181123, reversing decision # 133552 and concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits. On December 9, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Paychex Business Solutions LLC, an employee leasing company, employed claimant to work at the restaurant, Reverend's BBQ, as an assistant manager. Claimant's work assignment began in July 2020 and ended on May 11, 2021.

(2) Claimant's regular schedule was Thursday through Saturday evenings until closing time, and Sundays, all day.

(3) Claimant had two minor children under the age of 18. The older of the two children had and was receiving treatment for Disruptive Mood Dysregulation Disorder (DMDD). During 2020 and 2021, the child's DMDD symptoms became more severe, including "intense anger outbursts that can result in safety concerns." Exhibit 1. The child's medical provider recommended increased parental involvement to reduce safety concerns and improve symptom management. Exhibit 1.

(4) Based on the medical provider's recommendation and treatment plan for claimant's child, claimant determined that she, rather than a childcare provider, needed to be home in the evenings with her child who suffered from DMDD.

(5) In early April 2021, claimant spoke with her supervisor and told them that she needed to be home with her children in the evenings. Claimant agreed she would continue working until May 11, 2021 to give Reverend's BBQ time to train another assistant manager and to allow another manager the opportunity to take a vacation before claimant left work.

(6) Reverend's BBQ was not able to offer claimant an alternative to working evening shifts. Transcript at 34.

(7) On May 11, 2021, claimant worked her last shift at Reverend's BBQ.

(8) After May 11, 2021, Reverend's BBQ attempted to contact claimant "a few times" to offer claimant work, but claimant did not respond to Reverend's BBQ because the shifts were during times that claimant needed to care for her child. Transcript at 11.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with good cause.

**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).

"Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). In the case of individuals working for employee leasing companies, the employment relationship "shall be deemed severed at the time that a work assignment ends." OAR 471-030-0038(1)(a).

Due to the differing testimony about how claimant's employment ended and when it ended, it is necessary to address the nature of the work separation. Claimant asserted that she asked for and was granted a "leave of absence" from work, and that she believed she was no longer an employee when she received decision # 133552 in August 2021 stating that she was disqualified from receiving benefits. Transcript at 10, 17-18. However, the employer's witness testified that claimant gave "notice," which he understood as claimant stating that she did not intend to continue working at Reverend's BBQ after her final shift. Transcript at 26. The supervisor from Reverend's BBQ also testified that they "did leave it open-ended that . . . if she was feeling like she could come back then that would be a possibility." Transcript at 26.

Despite the "possibility" that Reverend's BBQ would allow claimant to "come back" sometime in the future, the record is clear that claimant was not willing to work evening shifts, and Reverend's BBQ was not able to offer claimant any alternatives to claimant's schedule of primarily evening shifts. Because claimant could have continued working at the Reverend's BBQ assignment for an additional period of time had she worked evening shifts, the work separation was a voluntary quit. Claimant's work

assignment ended on May 11, 2021, the day she voluntarily quit working for the employer. Thus, the date of the work separation was May 11, 2021.

**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) (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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. As pertinent here, OAR 471-030-0038(1)(e)(B) defines “compelling family reasons” to mean “[t]he illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off[.]” Further, OAR 471-030-0038(1)(f) defines “a member of the individual’s immediate family,” as used in OAR 471-030-0038(1)(e)(B), to include minor children under the age of 18.

The record shows that claimant lacked good cause for leaving work under the “compelling family reasons” provision because she did not show that she requested time off to care for her child, which is required to establish good cause to quit under OAR 471-030-0038(5)(g). The record shows that claimant quit work because she had to care for her oldest child due to the child’s illness or disability. Even though it may have been futile to do so, the record does not show that claimant asked the employer for time off work so that she could care for her child. Transcript at 32. Therefore, claimant failed to establish good cause to quit under OAR 471-030-0038(5)(g).

However, the record also shows that claimant had good cause to quit work pursuant to OAR 471-030-0038(4) due to her child’s mental health needs, and the lack of a reasonable alternative to quitting to meet those needs. Claimant faced a grave situation because her child needed claimant, and not a childcare provider, to care for her and assist her with her treatment plan in the evenings. Reverend’s BBQ was not able to change claimant’s schedule, and the record does not otherwise show that claimant had any alternative but to quit. Transcript at 34. For these 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-181123 is affirmed.

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

**DATE of Service:** January 19, 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.

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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**  
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