

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1086**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 5, 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 August 29, 2021 (decision # 90224). Claimant filed a timely request for hearing. On November 30, 2021, ALJ Lucas conducted a hearing, and on December 1, 2021 issued Order No. 21-UI-180893, affirming decision # 90224. On December 18, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rears Mfg. Co. employed claimant as a welder from February 6, 2017 until September 3, 2021.

(2) Claimant used public transportation to go to and from work. Following the onset of the COVID-19 pandemic, the schedule for the bus claimant took from his home to the employer's shop changed. Because of the schedule change, claimant had to wait an hour and a half after his shifted ended each day for his bus ride home. Claimant thought the hour and a half wait was "a complete waste of [his] time[.]" Transcript at 15. The wait caused him to be exposed to the cold when it was cold outside, and resulted in him riding home at a time when there was more traffic on the road.

(3) Claimant raised the fact he had to wait an hour and a half for his bus ride home with the employer's owners. Working a ten-hour shift could have allowed claimant to end his work shift without as much idle time before the bus arrived. Claimant suggested that the employer allow him to work four ten-hour shifts per week so that his work shift would end closer in time to when the bus arrived. However, the employer declined to allow claimant to work four ten-hour shifts because the employer's shop closed at 4:30 p.m. and it would have been unsafe to have claimant work alone beyond the end of the workday.

(4) Also following the onset of the pandemic, the employer implemented COVID-19 safety precautions that, among other things, required claimant and his coworkers to wear masks at work. The employer had 120 employees, most of whom wore their masks properly. However, claimant noticed that a group of

about eight of his coworkers would frequently wear their masks improperly below their noses. The coworkers' improper mask-wearing concerned claimant because of the risk of exposure to COVID-19.

(5) Claimant did not believe he had any underlying health conditions that made him more susceptible to COVID-19, and he had always passed his annual lung function tests although his results were barely within the acceptable range. However, he had gotten pneumonia in 2018 that made him "sicker than [he'd] ever been in [his] life," and claimant did not "wanna be sick like [he] was in 2018." Transcript at 8.

(6) In March and April 2021, claimant mentioned to several of the owners that the coworkers were wearing their masks improperly and that he was concerned about COVID-19 exposure. The employer counseled the coworkers to wear their masks properly but claimant observed that when outside of the presence of supervisors, the coworkers continued to wear their masks improperly in his work area on a more frequent basis, which claimant thought was deliberate.

(7) In June 2021, one of the employer's owners started "work[ing] with people in [claimant's] area . . . trying to ensure that people were wearing their masks." Transcript at 31. As a result, mask-wearing in claimant's work area improved.

(8) On June 29, 2021, claimant worked his last shift at the employer's shop. Thereafter, claimant took vacation time and then a leave of absence under a worker's compensation claim to prepare for, undergo, and then recover from hernia surgery.

(9) After recovering from surgery, claimant was released to return to work with a return to work date scheduled for September 6, 2021. On September 3, 2021, claimant and one of the owners had a telephone conversation to discuss claimant's upcoming return to work. During the call, claimant advised that he was resigning effective that day. The main reason claimant quit working for the employer was because of the hour and a half wait time for his bus ride home from work. Another reason claimant quit working for the employer was his concern about exposure to COVID-19 from the group of coworkers who wore their masks improperly.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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 main reason claimant quit working for the employer was because of the hour and a half wait time for his bus ride home from work. Claimant did not establish good cause to quit work based on this reason. At hearing, claimant described the hour and a half wait as "a complete waste of [his] time" and

testified that it affected his life by causing him to be exposed to the cold when it was cold outside, and riding home at a time when there was more traffic on the road. Transcript at 15. These impacts, while amounting to a substantial inconvenience, did not place claimant in a grave situation. The record does not show that his exposure to cold while waiting for the bus or presence on the bus when there was more traffic on the road posed a threat to his health or safety. The record also does not show that the time claimant wasted while waiting for the bus interfered with any of claimant's personal obligations or significantly hindered his ability to pursue activities in his spare time. Thus, claimant did not show that the hour and a half wait presented him with a situation of such gravity that he had no reasonable alternative but to leave work. Therefore, claimant did have good cause to quit work based on this reason.

Claimant also quit work because of his concern about exposure to COVID-19 from the group of coworkers who wore their masks improperly. Claimant did not establish that he had good cause to quit based on this reason. The record shows that in March and April 2021, the group of coworkers frequently wore their masks improperly in claimant's work area and remained noncompliant after being counseled about their conduct. However, the record also shows that in June 2021, one of the employer's owners started "work[ing] with people in [claimant's] area . . . trying to ensure that people were wearing their masks[,]” and that, as a result, proper mask-wearing in claimant's work area improved.<sup>1</sup> Transcript at 31. Further, at the time claimant quit work on September 3, 2021, he had been absent from the employer's shop since June 29, 2021, so it is not evident that claimant knew the status of proper mask-wearing at the employer's shop when he quit, and he did not show that it had worsened following the improvement in June. For these reasons, claimant did not show that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense would leave work when claimant did. Claimant's history of pneumonia, more likely than not, heightened his risk of severe COVID-19 symptoms if infected (notwithstanding that claimant testified at hearing that he did not believe he had any underlying health conditions that made him more susceptible to COVID-19). Transcript at 9. However, the preponderance of evidence does not show that the risk of COVID-19 transmission from improper mask-wearing was a situation of such gravity that claimant had no reasonable alternative but to leave work when he did. Claimant therefore did not have good cause to quit based on this reason.

For the above reasons, claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits effective August 29, 2021.

**DECISION:** Order No. 21-UI-180893 is affirmed.

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

**DATE of Service:** January 27, 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

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<sup>1</sup> At hearing, the parties disputed whether proper mask-wearing improved in June 2021, with claimant denying there had been improvement and the owner stating that claimant told him more than once that the situation had improved. Transcript at 26, 31, 35. Because the evidence on that disputed issue was equally balanced, the party with the burden of persuasion – here, claimant – failed to satisfy his evidentiary burden. As a result, EAB based its finding on this disputed matter on the employer's evidence

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  
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