

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0040**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 9, 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 May 31, 2020 (decision # 102505). Claimant filed a timely request for hearing. On December 13, 2021, ALJ Kaneshiro conducted a hearing that was interpreted in Vietnamese, and on December 14, 2021 issued Order No. 21-UI-181877, modifying decision # 102505 by concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective February 23, 2020. On December 31, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his 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 him 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) Nails & Spa Republic employed claimant as a nail technician from January 2020 until June 1, 2020.

(2) Until the end of February 2020, the employer paid claimant a base wage of \$450 per week, plus commission.

(3) By March 2020, the employer experienced a slowdown in business as a result of the COVID-19 pandemic, and decided to reduce claimant's pay. Although the employer stopped paying claimant his base wage in March 2020, claimant continued to work for the employer sporadically, depending on the availability of customers. In mid-March 2020, the employer's manager approached claimant and suggested that he seek other employment that would pay claimant a higher income, and if he found one, to "go for it." Transcript at 5, 17.

(4) On March 18, 2020, following their receipt of a governmental shutdown notice related to the COVID-19 pandemic, the employer shut down their business indefinitely. Claimant did not tell the employer that he was quitting at that time.

(5) Between March 18, 2020 and approximately June 1, 2020, claimant did not earn any income from the employer.

(6) On or around June 1, 2020, claimant began new employment with a new employer. The new employer paid claimant an hourly rate, plus commission, and did not permit claimant to work for other employers while working for them.

(7) Shortly after claimant began his new employment, the employer's manager contacted claimant and asked him to return to work. Claimant told the manager that he had begun new employment, and that he was unwilling to return to work for the employer.

**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).

The order under review found the employer's testimony "more persuasive" than claimant's testimony regarding claimant's dates of employment, and concluded that claimant quit work on February 29, 2020. Order No. 21-UI-181877 at 3. The employer's evidence was based primarily on hearsay statements from the employer's manager (wife) and his testimony regarding payroll records, which suggested that claimant quit work on February 29, 2020 and did not work for the employer thereafter. Transcript at 15, 23-24. The employer testified "From what I remember, my wife said that he [claimant] found another place that was willing to hire him and might have a higher salary." Tr. 16. In contrast, claimant provided firsthand testimony that the manager suggested he look for other work when fewer customers started coming to the nail salon leading up to the government shutdown in March and that the employer stopped paying him his weekly base pay at the end of February. Tr. 17, 19. Claimant testified he continued to work for the employer until approximately mid-March 2020, working on commission, when the nail salon closed due to the government shutdown, and testified he was willing to continue working for the employer until he began his new employment on or around June 1, 2020. Claimant's testimony is consistent with employer's testimony that claimant was not on the payroll after February. After claimant began his new employment, the employer's manager asked claimant to return to work in June and claimant declined to do so. Because the employer's evidence was based on hearsay, claimant's firsthand testimony was more persuasive regarding the date of the work separation. Accordingly, more likely than not, the work separation was a quit to accept an offer of work which occurred on approximately June 1, 2020.

**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.

Per OAR 471-030-0038(5)(a), a claimant who leaves work to accept an offer of other work “has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.”

The order under review concluded that claimant quit work without good cause, reasoning that claimant quit work on February 29, 2020 to seek higher paying work, and did not have a new job offer on that date or start his new job until June 1, 2020. Order No. 21-UI-181877 at 4. However, the record does not support the order’s conclusion and reasoning.

The firsthand evidence from claimant shows that the employer did not offer claimant a return to work until after he had accepted and began employment elsewhere. Given that claimant began his new employment before he was offered a return to work with his employer, the record shows the offer to work began in the shortest length of time deemed reasonable under claimant’s circumstances. Viewed objectively, it may be inferred that the offered work was reasonably expected to continue because claimant chose to remain at his new job rather than return to work for the employer. Finally, the new work paid an amount greater than the work left because claimant had not worked for the employer since mid-March 2020, and was not earning any income from the employer when he accepted the offer of new work. For these reasons, to the extent claimant quit work to accept the offer of other work, the record shows that claimant established that he quit work with the employer with good cause.

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-181877 is set aside, as outlined above.

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

**DATE of Service:** February 14, 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 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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