

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0047**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 23, 2020, 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 April 26, 2020 (decision # 131001). Claimant filed a timely request for hearing. On July 15, 2021, ALJ Kaneshiro conducted a hearing, and on July 16, 2021 issued Order No. 21-UI-170539, affirming decision # 131001. On August 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On September 9, 2021, EAB issued 2021-EAB-0639 reversing Order No. 21-UI-170539 and remanding for development of the record. On December 22, 2021, ALJ Kaneshiro conducted a hearing and issued Order No. 21-UI-182515, affirming decision # 131001. On January 5, 2022, claimant filed an application for review with EAB.

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Architectural Cost Consultants, LLC employed claimant as an estimator from September 30, 2019 until April 30, 2020.

(2) The employer's business involved estimating construction costs. Although the employer allowed employees to work from home for appointments or to perform certain tasks, the employer did not allow employees to work from home full time.

(3) On September 30, 2019, claimant began working for the employer. The employer paid claimant at a rate of \$57.70 per hour. When claimant began working for the employer, his wife and son lived in Bend,

Oregon. Claimant rented an apartment in Tigard, Oregon, and worked in the employer's Tigard office with full time work from approximately October 2019 through December 2019.

(4) Around January or February 2020, the employer's workload began to decrease due to lack of funding for projects and COVID-19 disruptions. As a result, the employer gave claimant fewer hours to work each week. Around the same time, claimant began spending more time with his wife and son in Bend, and would sometimes take Fridays off or otherwise decline some work during the week.

(5) In March 2020, the governor of Oregon declared a statewide emergency relating to the COVID-19 pandemic and ordered Oregon businesses to facilitate telework and work-at-home to the extent possible. Following the emergency declaration and order, the employer kept their office open but instituted COVID-19 safety precautions.

(6) In March and April 2020, the employer's workload continued to be "a little slow." July 15, 2021 Transcript at 25. The other estimators in the Tigard office worked approximately 30 hours per week during the slow time although some of the work involved "housekeeping and chores," which the owner assigned to keep them busy. July 15, 2021 Transcript at 24. Claimant continued to decline some work opportunities in the Tigard office, which reduced his work hours and earnings.

(7) Around mid-April 2020, without discussing the matter with the employer's owner, claimant gave up his Tigard apartment and moved to Bend. For the next two weeks, claimant worked on projects from his home in Bend.

(8) In late April 2020, the owner told claimant that he needed to work in the employer's Tigard office. Claimant did not want to work in the Tigard office because he thought he had "a lack of hours to substantiate an apartment" in Tigard and did not want to "[g]o back and get another apartment and shed more money." July 15, 2021 Transcript at 11; December 22, 2021 Transcript at 9. Claimant believed that he received work hours in January, February, March, and April 2020 that equated to only about 20 hours per week or half of the earnings he was promised when he began working for the employer. Claimant concluded that he "couldn't do it anymore" and it was "financially impossible" for him to continue working for the employer in the Tigard office. December 22, 2021 Transcript at 9. On April 30, 2020, claimant ceased working for the employer after signing a separation agreement that stated, in part, that claimant had voluntarily resigned.

(9) During the period of January 2020 through April 2020, claimant earned \$5,487 per month. At the time of claimant's work separation, claimant's cost of working for the employer, reflected in the monthly rent and utilities in Tigard claimant would have to pay, totaled \$2,600 per month.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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) (December 23, 2018). 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).

The preponderance of evidence supports that claimant voluntarily quit working for the employer on April 30, 2020. The record shows that in January, February, March, and April 2020, claimant worked fewer hours due to the employer's workload decreasing and claimant declining work in order to spend time with his wife and son. The record further shows that in mid-April 2020, claimant gave up his apartment in Tigard and moved to Bend. When the owner told claimant that he needed claimant to work in the Tigard office, claimant declined to do so because he thought he had "a lack of hours to substantiate an apartment" in Tigard and did not want to "[g]o back and get another apartment and shed more money." July 15, 2021 Transcript at 11; December 22, 2021 Transcript at 9. Claimant concluded that he "couldn't do it anymore" and signed an agreement with the employer on April 30, 2020 that stated, in part, that claimant had voluntarily resigned. December 22, 2021 Transcript at 9. This evidence is sufficient to establish that, as of April 30, 2020, continuing work was available to claimant but he was not willing to work for the employer for an additional period of time. Therefore, the work separation was a voluntary leaving that occurred on April 30, 2020.

**Voluntary Leaving.** 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) (December 23, 2018). "[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. A claimant who leaves work due to a reduction in hours "has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received." OAR 471-030-0038(5)(e).

At the hearing conducted on December 22, 2021, claimant testified repeatedly that the reason he moved to Bend in mid-April 2020 and was unwilling to work in the employer's Tigard office when he quit work was because his work hours had been reduced and he could not afford to work for the employer in their Tigard office. December 22, 2021 Transcript at 5, 8, 9, 15, 23. Thus, the record shows, more likely than not, that the reason for claimant's voluntary leaving from work on April 30, 2020 was the reduction of claimant's work hours.<sup>1</sup>

Claimant did not satisfy either of the criteria necessary to establish good cause under OAR 471-030-0038(5)(e). The record does not show that continuing to work for the employer substantially interfered with a return to full time work. To the contrary, the owner testified that in March and April 2020 the other estimators worked in the employer's office about 30 hours a week doing housekeeping and chores if necessary. July 15, 2021 Transcript at 24. The weight of the evidence

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<sup>1</sup> Notably, claimant testified that his refusal to work in the employer's Tigard office was not because of a government directive related to COVID-19 nor due to a desire to spend time with his wife and son. Transcript at 5, 10, 11, 13, 14, 20. In light of this testimony, the record shows that claimant did not quit work because of a COVID-19 related situation. Therefore, claimant's voluntary quit need not be assessed under the provisions that provide that an individual who quits work because of a COVID-19 situation is not disqualified from receiving benefits, and the portions of claimant's written argument that argue that claimant quit work because of a COVID-19 related situation are not supported by the record. Written Argument at 3-8.

supports that if claimant had continued to work rather than quit on April 30, 2020, he would likely have received about 30 hours of work per week. Working 30 hours per week would have represented an improvement over the approximately 20 hours per week claimant believed he worked in January, February, March, and April 2020, and would not constitute a substantial interference with returning to full time work.

The record also does not show that claimant's cost of working exceeded the amount of remuneration claimant received. As to claimant's cost of working, claimant testified that his rent in Tigard was \$2,500 per month plus approximately \$100 for utilities. December 22, 2021 Transcript at 7, 25. As to the amount of remuneration claimant received, at hearing, claimant testified that based on his 2020 W-2 form, the remuneration he received from the employer each month for January, February, March, and April 2020 was approximately \$5,487. December 22, 2021 Transcript at 7; Exhibit 1 at 2. The record raises doubt that this figure is a reflection of remuneration received due to reduced work hours alone, however, as there is evidence that claimant declined some work during January, February, March, and April 2020 in order to spend time with his wife and son. Moreover, the owner testified that in March and April 2020 the other estimators worked in the employer's office about 30 hours a week doing housekeeping and chores if necessary. July 15, 2021 Transcript at 24. The weight of the evidence supports that had claimant not declined some work in April 2020 and worked out of the Tigard office along with the other estimators, he would have worked about 30 hours per week. This means that claimant's remuneration for the month of April 2020 would have been approximately \$6,924 (\$57.70 hourly wage multiplied by 30 hours per week, multiplied by the four weeks in the month of April 2020).

In any event, using claimant's \$5,487 figure for the remuneration received, the record shows that claimant's cost of working at the employer's Tigard office in April 2020 of \$2,600 did not exceed the \$5,487 in remuneration claimant received for April 2020.<sup>2</sup> Claimant's \$2,600 cost of working would likewise fall short of the approximately \$6,924 figure claimant would have received for April 2020 had he not declined to work out of the employer's Tigard office. Thus, claimant did not establish that the cost of working exceeded the amount of remuneration received.

The record therefore shows that claimant left work without good cause under OAR 471-030-0038(5)(e). Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 26, 2020.

**DECISION:** Order No. 21-UI-182515 is affirmed.

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

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<sup>2</sup> At hearing, claimant testified that his total cost of working was \$3,380, which reflected \$2,600 in monthly rent and utilities in Tigard plus approximately \$780 in monthly travel costs between Bend and Tigard. December 22, 2021 Transcript at 30. While it is doubtful that both rent in Tigard and travel costs between Bend and Tigard be included in the cost of working calculation, the figure of \$3,380 also does not exceed the \$5,487 in remuneration claimant received for April 2020. Nor does the \$3,380 figure exceed the approximately \$6,924 claimant would have received for April 2020 had he not declined some work in April 2020 and worked out of the Tigard office along with the other estimators.

**DATE of Service: February 17, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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