

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0118**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation (decision # 140245). The employer filed a timely request for hearing. On January 10, 2022, ALJ Lucas conducted a hearing, and on January 14, 2022 issued Order No. 22-UI-184119, affirming decision # 140245. On January 18, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Reynolds School Dist. #7 Multnomah employed claimant as a teaching assistant in Troutdale, Oregon from January 14, 2016 until July 30, 2021. During this time period, claimant would not work each year from mid-June to September because she was off for “summer vacation.” Transcript at 14.

(2) Prior to the beginning of June 2021, claimant’s husband lost his job and, as a result, claimant and her family could not afford to keep their house. Claimant’s husband began searching for new employment.

(3) Between early June 2021 and June 17, 2021, when claimant began summer vacation, claimant had several conversations with the employer’s principal to let them know that her husband had lost his job and that she might be leaving her employment so that her husband could seek work opportunities out of state.

(4) Prior to July 30, 2021, claimant and her husband sold their house and were required to move out of it by August 2, 2021. Claimant and her husband subsequently moved in with friends in the Portland area.

(5) On July 30, 2021, claimant resigned her position with the employer based on the sale of her house and because she and her husband had planned to move to Colorado. Because claimant and her husband planned to move to Colorado, claimant did not ask the employer about other alternatives to leaving work. Thereafter, claimant and her husband decided to remain in Portland, staying with friends, so that

they could be on hand for their son's impending departure for the military on August 17, 2021. Claimant's husband continued to look for work in the Portland area during this time period.

(6) In September 2021, claimant and her husband relocated to Colorado and moved in with relatives because claimant's husband had been unable to find work in Portland and because they believed there would be more opportunities for him to find work in Colorado. Had claimant pursued a leave of absence with the employer, the employer would have been willing to accommodate an unpaid leave of absence for the 2021–2022 school year.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-184119 is reversed and this matter remanded for further development of the record.

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 order under review concluded that claimant left work with good cause because claimant faced a grave situation after her husband lost his job and they could no longer afford their home and had to relocate to Colorado to stay with relatives. Order No. 22-UI-184119 at 2. The order under review also concluded that claimant had no reasonable alternatives to leaving work because commuting from Colorado to Oregon was not practical, remote work with the employer was unavailable, and an unpaid leave of absence “was not a realistic option.” Order No. 22-UI-184119 at 2. The record supports the conclusion that claimant faced a grave situation because her family was unable to afford their home after her husband lost his job. However, further inquiry is needed to determine whether claimant had a reasonable alternative to leaving work when she did.

The record supports the conclusion that that the possibility of a leave of absence that would have covered the 2021-2022 school year was not a reasonable alternative as it would have, more likely than not, required claimant to remain in an unpaid status for a protracted period of time. Given claimant's grave financial circumstances, a protracted and unpaid leave of absence “[was] not an alternative at all” for claimant. *Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that “a protracted, unpaid leave of absence is not a ‘reasonable alternative’ to leaving work and being unemployed; indeed it is not an alternative at all”); *see also Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension).

However, the record as developed raises unanswered questions as to whether claimant had the reasonable alternative of remaining with the employer past July 30, 2021 in order to pursue a more affordable housing option in the Portland area, while her husband continued to seek new employment in

the Portland area. These questions are particularly germane to a determination of whether claimant quit work with good cause because the record shows that claimant and her husband planned to remain in the Portland area until at least August 17, 2021, to see their son off to the military, and that they did, in fact, remain in the Portland area until September 2021. Furthermore, during this time, claimant's husband continued to seek work in the Portland area. As such, this evidence suggests that had claimant's husband found work during this time period, claimant and her husband may have remained in the Portland area.

Here, the record shows that on August 2, 2021, claimant and her husband moved out of their recently-sold house and began residing with friends in the Portland area. However, further inquiry is needed to determine the circumstances surrounding this living arrangement, including when it was established, the terms of the living arrangement, and whether this living situation was viable for a more extended period of time, such that it would allow for her to remain with the employer while her husband continued to seek work in the Portland area. If not, further inquiry should explore whether claimant and her husband pursued other affordable housing options in the Portland prior to her decision to quit, and the specific circumstances surrounding any such efforts.

Likewise, in light of the fact that claimant had summers off from the employer, the record leaves unanswered questions regarding claimant's income from the employer at the time she gave notice that she was quitting or whether she or her husband had other sources of income available in order to pursue more affordable housing. Without further inquiry into these financial considerations and the living expenses she and her husband had at the time she decided to quit, it is not possible to properly determine whether claimant had the reasonable alternative of remaining with the employer while seeking a more affordable housing situation in the Portland area, while her husband sought work.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant quit work with good cause, Order No. 22-UI-184119 is reversed, and this matter is remanded.

**DECISION:** Order No. 22-UI-184119 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 3, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-184119 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
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