

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0130**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 10, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 74804). The employer filed a timely request for hearing. On January 11, 2022, ALJ Lucas conducted a hearing at which claimant failed to appear, and on January 18, 2022 issued Order No. 22-UI-184213, affirming decision # 74804. On January 20, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) St. Charles Health System, Inc. employed claimant as a registered nurse from August 17, 2020 until October 15, 2021.

(2) In or around September 2021, the employer informed their employees that in order for the employer to comply with an executive order passed by the Governor and rules issued by the Oregon Health Authority (OHA), employees would be required to either be fully vaccinated against COVID-19 by October 18, 2021 or obtain an exception from vaccination based on medical or religious grounds. Claimant requested a religious exception, and the employer granted claimant's request. Claimant did not become vaccinated against COVID-19.

(3) The employer determined that they would offer a choice of two accommodations to employees who were unvaccinated and had been granted a religious or medical exception: either seek a different position within the company that could be performed remotely or accept an unpaid leave of absence. If an employee did not accept one of these two accommodations, they would have to resign. The employer would not have allowed claimant to continue working in a direct patient-care role after October 18, 2021 because he was unvaccinated.<sup>1</sup> The employer did not offer claimant any positions which could have been performed remotely, but instead expected him to seek them within the company if he so chose.

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<sup>1</sup> Under OAR 333-019-1010(5), employers of healthcare providers or healthcare staff, contractors and responsible parties who grant a medical or religious exception to the vaccination requirement must take reasonable steps to ensure that

(4) Claimant neither sought a remote-work position within the company nor accepted an unpaid leave of absence. Instead, on or around October 13, 2021, claimant informed his manager that he had decided to resign. Claimant last worked for the employer on October 15, 2021.

**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).

As a preliminary matter, the order under review concluded that the employer’s witness was not credible in regards to her testimony that claimant had resigned from his position, and instead found that claimant had been discharged. Order No. 22-UI-184213 at 2. In so concluding, the order did not cite any contradictory evidence or otherwise explain why the employer’s witness lacked credibility. The testimony that the order under review was apparently referring to was the witness’s statement that claimant had notified his manager that he had decided to resign, and a subsequent email on October 13, 2021 in which claimant told his manager that it had been “an extremely difficult decision.” Audio Record at 23:52, 21:27. The record shows that the witness’s testimony was generally consistent. Further, claimant did not appear at the hearing, and therefore did not offer any evidence to contradict any of this testimony. For that reason, the record shows that the employer’s witness was credible in regards to her testimony that claimant had informed his manager that he was resigning his position, and the facts in this decision have been found accordingly.

Aside from the question of the credibility of the employer’s witness, however, the order under review concluded that claimant had been discharged because “the employer did not allow claimant to continue working for the employer after October 15, 2021” despite the fact that “claimant was willing to work for the employer for an additional period of time.” Order No. 22-UI-184213 at 2. This conclusion was apparently based, at least in part, on the employer’s witness’s testimony that she believed that claimant would have been willing to continue working for the employer if he had been permitted to do so. Audio Record at 9:29. Even assuming that claimant had been so willing, however, the record does not show that claimant was willing to continue working for the employer if doing so meant accepting the accommodation options provided by the employer: namely, that claimant either find a remote-work position within the company or else accept an unpaid leave of absence. In essence, the employer gave claimant accommodation options that would have allowed him to remain employed, showing that the employer was willing to allow claimant to continue working for them for an additional period of time. Because claimant had two options which would have allowed him to continue the employment relationship, but chose not to pursue either of them, claimant voluntarily quit work when he left work on October 15, 2021 without having accepted either of the accommodations that the employer offered him.

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unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19. For purposes of this decision, all citations to the rule refer to the version of the rule adopted on September 1, 2021 and effective through January 31, 2022, when the rule became permanent.

**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.

Claimant voluntarily quit working for the employer because he chose not to accept the employer’s offered accommodations that resulted from the vaccination exception that the employer had granted him. The record shows that claimant faced a situation of such gravity that he had no reasonable alternative but to quit. First, the record does not show that the employer would have been likely to offer claimant a remote-work position even if he had applied for one because claimant was a registered nurse and patient care could not be performed remotely. The record fails to show that claimant was qualified for work outside of patient care. For that reason, any attempt that claimant would have made to obtain a remote-work position with the employer would have more likely than not been futile. Second, the Court of Appeals has held that an unpaid, indefinite leave of absence is not a reasonable alternative to voluntarily leaving work. *See 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”); *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).

Therefore, because claimant had no reasonable alternative but to quit, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-184213 is affirmed.

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

**DATE of Service:** March 3, 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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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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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