

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0171**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 28, 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 June 13, 2021 (decision # 104649). Claimant filed a timely request for hearing. On January 24, 2022, ALJ Demarest conducted a hearing, and on January 25, 2022 issued Order No. 22-UI-184757, reversing decision # 104649 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On January 27, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Lane County School District #19 employed claimant as a teacher from September 21, 2016 to June 30, 2021. Claimant's employment was contracted annually. The employer generally requested that she, and other teachers, inform them of plans to return the following academic year by March or April of the current academic year.

(2) Prior to the COVID-19 pandemic, claimant taught her classes' in-person at two of the employer's buildings.

(3) In March 2020, in response to the pandemic, the employer converted all classes to remote learning. At that time, the employer's schools were closed, and their faculty, including claimant, taught remotely from home.

(4) At some point in or after March 2020, the employer's human resources department sent an email requesting that employees identify themselves to the employer if they were high risk for complications

from COVID-19. Because of her age and because she suffered from chronic bronchitis, claimant identified herself as high-risk to the employer. The employer acknowledged claimant's high-risk status.

(5) In March 2021, the employer notified their faculty that they would be required to begin reporting to school to teach, regardless of whether the teaching would be performed in-person or remotely. The notice also informed faculty that anybody previously designated as high-risk would be required to either voluntarily "rescind" their high-risk status or take an unpaid leave of absence. Transcript at 9. The employer did not explain why they would no longer allow their faculty members to teach from home. Claimant subsequently sent an email to the employer requesting a transfer to the district's online-only school, but the employer did not respond.

(6) Claimant's medical status did not change in or after March 2021, and her medical provider advised her not to return to work in person. Claimant last taught remote classes on March 31, 2021, and began a medical leave of absence for high-risk employees on April 1, 2021. Claimant would have been willing to continue teaching for the employer remotely from home if she had been allowed to do so.

(7) In early June 2021, the employer questioned claimant as to whether she planned to return for the 2021-2022 academic year, because if she chose not to they would have to begin searching for a replacement. As a result, claimant felt "pressured to make a decision" as to whether to return. Transcript at 19.

(8) On June 8, 2021, the employer notified their faculty that leave for high-risk employees would be ending on June 30, 2021, that "as of July 1, 2021, employees [would] no longer have an option to designate themselves as high risk," and that employees who had a "legitimate medical reason that would prevent them from reporting to work" could seek taking sick leave or request a longer-term leave of absence. Transcript at 48. Claimant discussed the matter with both her supervisor and her union representative, but neither were able to offer any other options besides returning to work on-site or taking additional leave. If claimant had elected to take further leave, any such leave would have been unpaid, as she did not have any sick leave remaining at the time.

(9) As a result of the employer's June 8, 2021 announcement, claimant decided that she was unwilling to take the risk of returning to teach on-site at the school. Claimant was also concerned about continuing on a leave of absence, as doing so would leave her without any income. Claimant did not make a second request to the employer to transfer to the district's online-only school. At the time, claimant was eligible to begin taking her Public Employee Retirement System (PERS) benefits if she retired from teaching for the employer. On June 24, 2021, claimant notified the employer that she intended to retire from teaching for the employer as of June 30, 2021. Claimant did so, and began collecting PERS benefits effective July 1, 2021. Despite her retirement status, claimant remained willing to work, and continued to look for work thereafter.

**CONCLUSIONS AND REASONS:** Claimant quit work with 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). Claimant had chronic bronchitis, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Claimant voluntarily quit work because, due to her age and chronic bronchitis, she was at high risk for complications from COVID-19, and the employer would no longer permit her to teach remotely from home. Because of the greater-than-average risk of medical complications that working on-site posed to claimant, she faced a grave situation. Additionally, claimant was advised by her medical provider not to return to working on-site at the employer’s facilities. In such circumstances, a reasonable and prudent person in claimant’s medical condition would have quit work if there was no reasonable alternative.

At the time that claimant quit, the only alternative likely available to her was to potentially continue on a leave of absence. The Court of Appeals has held that a protracted, unpaid leave of absence is not a reasonable alternative to quitting. *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).

Although the employer’s witness testified at hearing that claimant might have been able to use personal paid time off to cover some of an additional leave of absence, neither the employer’s witness nor claimant testified that claimant actually had any personal time remaining at the time that claimant quit. Transcript at 40. Given, too, that claimant had already been on a leave of absence for three months at the time that she quit, claimant more likely than not had already used her remaining paid time off by the time she quit, and any further leave she elected to take would therefore likely have been entirely unpaid. Because the record does not indicate that claimant’s high-risk status or the employer’s decision to return faculty to on-site teaching would have likely changed in the near future, any such leave that claimant elected would likely have been both unpaid and protracted, and therefore not a reasonable alternative to quitting.

Finally, the record does not show that the employer would have been likely to permit claimant to transfer to the district’s online-only school, such that she could continue to teach from home. Although claimant did not ask the employer about a transfer a second time prior to quitting, the employer did not offer evidence showing that such a transfer would have been available to claimant, or that they would have permitted claimant to teach from home even if she was allowed to teach classes to remote students. Given the lack of such evidence, the employer’s failure to respond to claimant’s request for a transfer in March 2021, and both claimant’s supervisor and union representative having made no mention of such an option, the record shows that, more likely than not, any additional request claimant made to transfer would have been futile. Claimant therefore had no reasonable alternative but to quit, and did so with good cause.

For the above reasons, claimant voluntarily quit working for the employer with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-184757 is affirmed.

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

**DATE of Service:** March 15, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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 desisyong ito.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.