

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0183**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 23, 2020, 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 July 12, 2020 (decision # 82156). Claimant filed a timely request for hearing. On January 19, 2022, ALJ Lucas conducted a hearing, and on January 26, 2022 issued Order No. 22-UI-184907, affirming decision # 82156.<sup>1</sup> On January 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her 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 her 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) Russellville Park LLC employed claimant as a front desk attendant from August 2018 until approximately July 17, 2020. Claimant worked at the employer's residential care facility.

(2) In the course of her duties, claimant frequently came in contact with the elderly residents of the facility. The residents frequently did not comply with the employer's mandate that they wear facemasks and follow social-distancing practices in order to prevent the spread of COVID-19. Claimant was concerned that the residents' noncompliance with the facility's COVID-19 safety protocols put her at

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<sup>1</sup> The order under review concluded that claimant was disqualified from receiving benefits effective July 11, 2021. Order No. 22-UI-184907 at 2. However, as decision # 82156 was issued in December 2020, and the record shows that the events relevant to the work separation occurred in 2020, the order under review is presumed to have meant that the date of disqualification was July 12, 2020.

risk for contracting COVID-19. When claimant raised this concern with her supervisor, the supervisor suggested that claimant enforce the protocols herself by maintaining social distance from the residents. Claimant attempted to do so, but was not always successful, in part because some of the residents suffered from hearing loss. Claimant always wore a facemask while working.

(3) Around early July 2020, one of claimant's coworkers tested positive for COVID-19, after one or two coworkers had already done so. Claimant also became aware of outbreaks of COVID-19 at similar residential care facilities. As a result, claimant became concerned that she would contract COVID-19 at work, and notified the employer that she intended to resign in about two weeks. On July 17, 2020, claimant voluntarily quit work due to her concerns about contracting COVID-19 at work.

(4) Claimant did not have any underlying conditions that made her more susceptible to complications from COVID-19, were she to contract it. Claimant was not advised by a medical provider or public health official to quarantine to avoid contracting COVID-19, nor was she quarantined due to exposure or potential exposure to the virus. Claimant did not have to care for someone who was infected with the virus or subject to a mandatory quarantine.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without good cause.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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. However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OAR 471-030-0070(1), a COVID-19 related situation includes the following:

- (a) A person is unable to work because they are ill with the novel coronavirus;
- (b) A person is unable to work because they have been potentially exposed to the novel coronavirus and have been subjected to a mandatory quarantine period;
- (c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;
- (d) A person is unable to work because their employer has ceased or curtailed operations due to the novel coronavirus, including closures or curtailments based on the direction or advice of the Governor or of public health officials;

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine;

(f) A person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus; and

(g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Claimant voluntarily quit work because she was concerned about contracting COVID-19 at work after she learned of coworkers who had been infected, and outbreaks that had occurred at similar residential care facilities. As a preliminary matter, despite the fact that claimant quit work due to concerns relating to COVID-19, claimant did not quit work because of a "COVID-19 related situation" as that term was defined by *temporary* OAR 471-030-0070(1), which was in effect at the time that claimant quit. Claimant was not ill with COVID-19, was not subject to a mandatory quarantine, advised by a health care provider or public official to quarantine, or unable to work due to having to care for someone else who was infected with COVID-19 or subject to a mandatory quarantine. The record also does not show that any of the other circumstances contemplated under *temporary* OAR 471-030-0070(2)(b) applied to claimant. Rather, claimant quit due to "a general fear of getting COVID[.]" Audio Record at 16:58. Because claimant did not quit for a "COVID-19 related situation," the question of whether claimant quit for good cause must be considered under OAR 471-030-0038(4).

In order for claimant to have voluntarily quit work with good cause, she must have shown that she faced a situation of such gravity that she had no reasonable alternative but to leave work. Claimant has not met her burden to show that her "general" concerns about contracting COVID-19 constituted such a situation. While claimant's concerns about contracting COVID-19 were understandable, claimant confirmed that she did not have any underlying conditions that would have put her at heightened risk of complications. Claimant also did not offer evidence to show that she lived with, or was in regular close contact with, any other persons who had a heightened risk for complications if they were to contract COVID-19. Additionally, while claimant explained that she had difficulty in maintaining social distance between herself and the residents of the facility, claimant always wore a mask at work. In sum, claimant has not shown that the potential for contracting COVID-19 at work was such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for their employer for an additional period of time.

Further, claimant had worked for the employer before the beginning of the COVID-19 pandemic, and continued to work for them several months into the pandemic. While claimant explained that her fear of contracting the virus had been increased by the recent news of one or more coworkers having contracted the virus, and of outbreaks occurring at similar facilities, claimant did not show that she actually faced a higher risk for contracting COVID-19 at that point in time than she had for the several months prior to the date that she quit.

For the above reasons, claimant has not met her burden to show that no reasonable and prudent person, facing the circumstances that claimant faced, would have continued to work for the employer. Claimant therefore quit work without good cause, and is disqualified from receiving unemployment insurance benefits effective July 12, 2020.

**DECISION:** Order No. 22-UI-184907 is affirmed.

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

**DATE of Service: March 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 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  
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