

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0282**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 12, 2021, 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 February 21, 2021 (decision # 151357). Claimant filed a timely request for hearing. On February 10, 2022, ALJ Logan conducted a hearing, and on February 16, 2022 issued Order No. 22-UI-186608, reversing decision # 151357 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On March 1, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer submitted written argument on March 1, 2022 and on March 7, 2022, submitted a declaration that he had provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a). Claimant submitted written argument on March 23, 2022, but did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Both the employer's argument and claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the respective parties' reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered the employer's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) The employer employed claimant as a paralegal in his law office from September 2019 until February 1, 2021.

(2) In January 2021, claimant requested a raise from the employer but the employer declined to raise claimant's rate of pay. Around the same time, the employer deleted a spreadsheet on claimant's computer that claimant used to track payments from clients. Claimant had used the spreadsheet as a reference tool, and believed information in the spreadsheet showed improper accounting practices on the part of the employer. The employer deleted the spreadsheet because he considered it to be insecure

because it was not password protected. The employer also believed claimant kept the spreadsheet to track the employer's profits so that he could cite to the profits when making raise requests.

(3) On or about January 29, 2021, claimant was at his desk at work and discovered that sanitary wipes he kept at his desk were missing. Claimant suspected his coworker, the only other worker in the three-person office, had taken his wipes. Claimant asked the coworker if she had taken the wipes, but she denied having done so. Claimant did not believe the coworker, and while she was away from her desk, left a note on her desk suggesting that she had lied to claimant.

(4) When the coworker saw claimant's note, it upset her and she approached the employer for assistance. The employer decided that the office environment had become tense, and scheduled a meeting for February 1, 2021 with claimant and the coworker in order to discuss any grievances.

(5) On February 1, 2021, the employer, claimant, and the coworker held a meeting. The employer began the meeting by offering claimant time to discuss any issues that bothered him. Claimant spoke uninterrupted for 15 to 20 minutes about matters relating to the deleted spreadsheet, the employer's accounting practices that he thought were improper, and certain habits of the coworker that he found annoying. The employer asked claimant if he had finished speaking and claimant confirmed that he had done so. The employer then offered the coworker an opportunity to speak and she spoke briefly about aspects of claimant's behavior that she considered rude.

(6) After the coworker finished speaking, the employer began talking and attempted to address the points made by claimant and the coworker. As the employer did so, claimant interrupted him. The employer continued trying to speak, but claimant interjected again. The employer became frustrated by claimant's interruptions and told claimant, in a loud tone of voice, "shut up" three times. Transcript at 21. Claimant was seated at his desk when this occurred. The employer was standing six feet away by a front counter. After the employer yelled "shut up" three times, claimant stopped interjecting. The employer concluded the meeting by instructing claimant to approach the employer directly with any concerns about the coworker and for the coworker to do the same with any concerns about claimant.

(7) Claimant found the employer's behavior in shouting "shut up" three times at claimant to be "incredibly intimidating." Transcript at 10. Claimant considered the employer to have "absolutely freaked out," and thought the employer might try to punch him. Transcript at 14. The employer's behavior led claimant to decide to resign. Upon the conclusion of claimant's shift that day, claimant left a resignation letter on the employer's desk and never worked for the employer again.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without 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). 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 quit with good cause because the employer's behavior presented claimant with a situation of such gravity that he had no reasonable alternative but to leave work when he did. Order No. 22-UI-186608 at 3-4. The record does not support the conclusion of the order under review.

As a preliminary matter, the parties' accounts differed about aspect of the behavior of the attendees at the February 1, 2021 meeting. Claimant denied ever interrupting the employer and maintained that the employer "stood up in [claimant's] desk, . . . screaming at the top of his lungs, pointing his finger right in [claimant's] face, . . . as loud as he could, 'shut up[.]'" Transcript at 18, 9. The employer, in contrast, testified he stood six feet away from claimant during the meeting and yelled "shut up" in a loud voice three times only after getting "frustrated" because claimant spoke over him multiple times while the employer tried to speak. Transcript at 21. Viewed objectively, the evidence as to whether claimant interrupted the employer and whether the employer was physically threatening or engaged in any improper conduct other than yelling "shut up" three times was no more than equally balanced between the parties. Where the evidence is no more than equally balanced, the party that has the burden of persuasion—here, claimant—has failed to satisfy their evidentiary burden. Consequently, on the disputed matters above, EAB based its findings on the employer's evidence.

Claimant failed to meet his burden to prove that he quit work with good cause. Claimant quit work on February 1, 2021 because of the employer's conduct during the meeting that day. Claimant described the employer's behavior that day as "incredibly intimidating" and testified that the employer's behavior left claimant feeling "absolutely freaked out" and as though the employer "was gonna punch [claimant]." Transcript at 10, 14. However, the good cause standard is an objective one and the weight of the evidence shows merely that the employer yelled "shut up" at claimant three times from a position six feet away from claimant after claimant repeatedly interrupted him. Given that the record does not support that the employer was physically threatening or subjected claimant to abusive language other than telling him to "shut up," claimant did not establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work when claimant did. While the employer's outburst was may have been rude, it did not present claimant with a situation of such gravity that he had no reasonable alternative but to leave work when he did.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective January 31, 2021.

**DECISION:** Order No. 22-UI-186608 is set aside, as outlined above.

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

**DATE of Service:** May 4, 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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