

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0473**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 6, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 111625). The employer filed a timely request for hearing. On March 23, 2022, ALJ Blam-Linville conducted a hearing, and on March 28, 2022 issued Order No. 22-UI-189850, reversing decision # 111625 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective December 5, 2021. On April 15, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument<sup>1</sup> contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him 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 claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Mt. Hood Community College employed claimant as a facilities and environmental safety manager for their Head Start division from July 2017 to December 8, 2021.

(2) The employer, a community college, operated Head Start programs at several facilities throughout the district that the college served. Some of those programs were located at facilities operated at K-12 school districts, while others were not. An "essential function" of claimant's position was to "be available for maintenance at all sites" where the employer operated Head Start programs. Transcript at 18. Claimant's position required him to be in contact with other people.

---

<sup>1</sup> Claimant submitted separate written arguments on April 15, 2022 and on May 4, 2022. As the substance of both arguments is identical, all citations to claimant's written argument, herein, refer to claimant's April 15, 2022 argument.

(3) In August 2021, the Oregon Health Authority (OHA) adopted an administrative rule that required employees of school-based who programs who had direct or indirect contact with students or children while providing services for the school-based program to provide their employers with proof that they were vaccinated against COVID-19, or obtain a medical or religious exception from vaccination by October 18, 2021.<sup>2</sup> The rule contained similar provisions that pertained to employees of schools. Employers who failed to comply with the rule's requirements could be subject to fines of \$500 per day per occurrence.

(4) The employer did not universally require that all of their Head Start employees become vaccinated or obtain a religious or medical exception from vaccination. However, the employer did impose this requirement for employees who would be working onsite at schools that required their staff to be vaccinated or obtain an exception from vaccination.

(5) On November 4, 2021, the employer notified claimant via email that he would be required to provide proof that he was vaccinated, or obtain an exception from vaccination, by November 22, 2021. The employer issued this notice to claimant because one of the employer's Head Start programs, located at a school district facility that required vaccination, was expected to reopen on November 30, 2021. On November 5, 2021, claimant responded to the employer's email and informed them that he did not intend to become vaccinated or seek a medical or religious exception. Claimant's opposition to being vaccinated was the result of his upbringing, which taught him to take a "holistic view" on health and to "help your body fight the disease." Transcript at 7. However, claimant had received "a couple" of other vaccinations as an adult. Transcript at 7. Claimant did not have a religious or medical reason for his opposition to vaccination against COVID-19. Claimant did not become vaccinated against COVID-19.

(6) On December 1, 2021, claimant met with his supervisor and a human resources representative who advised claimant that he had until December 8, 2021 to obtain the first vaccine shot or submit an exception request, and that he could face being discharged if he did not comply. The employer did not offer to allow claimant to resign, nor did they advise him that he should do so.

(7) On December 2, 2021, claimant notified the employer that he intended to resign effective December 8, 2021. Claimant decided to resign because he was not willing to become vaccinated or seek a medical or religious exception from vaccination, and because he believed that being discharged instead of resigning could hurt his future employment prospects. On December 8, 2021, claimant quit working for the employer.

**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

---

<sup>2</sup> See OAR 333-019-1030 (August 25, 2021).

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. Per OAR 471-030-0038(5)(b)(F), leaving work without good cause includes resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct.

“As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.” OAR 471-030-0038(3)(a). “[W]antonly negligent’ means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.” OAR 471-030-0038(1)(c). Isolated instances of poor judgment are not misconduct. OAR 471-030-0038(3)(b).

Claimant voluntarily quit work because he was facing the possibility of being discharged due to his refusal to become vaccinated against COVID-19 or seek a religious or medical exception from vaccination. To the extent that claimant quit to avoid a potential discharge for misconduct, claimant quit without good cause under OAR 471-030-0038(5)(b)(F). In order to establish that claimant was facing a potential discharge for misconduct, it is necessary to determine whether the reason for his discharge would have constituted misconduct under OAR 471-030-0038(3)(a). The record shows that it would have.

OAR 333-019-1030 governed the duties of schools and school-based programs in regards to COVID-19 vaccination requirements. The rule prohibited employees of school-based programs from performing services for those school-based programs after October 18, 2021, unless they provided their employers with proof that they were vaccinated against COVID-19, or obtained a medical or religious exception from vaccination, if the employees had direct or indirect contact with students or children while providing services for the school-based programs. OAR 333-019-1030(7), (8). School based programs that violated the rule were subject to fines of \$500 per day per violation. OAR 333-019-1030(15).

In his written argument, claimant asserted that the employer was not required to comply with the rule because the rule applied only to K-12 schools, rather than pre-K programs such as Head Start. Claimant’s Written Argument at 1. OAR 333-019-1030(2)(f) and (g) define “school” and “school-based program,” respectively, as a “public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof,” and “a program serving children or students that takes place at or in school facilities.” Claimant is therefore correct that the employer’s Head Start programs were not, in and of themselves, required comply with the rule’s vaccination mandate. However, the record shows that some of the employer’s Head Start programs were housed at schools, while others were housed at other facilities not associated with school districts. Thus, for purposes of OAR 333-019-1030(2)(g), the employer’s Head Start programs that took place at schools were school-based programs.

Further, OAR 333-019-1030(2)(h) defines “school-based program staff and volunteers,” in pertinent part, as any person age 16 and older who is employed by a school-based program, including but not limited to teachers, administrative staff, child care staff, cleaning staff, coaches, school-based program

drivers and family volunteers, and who is providing services at or for a school-based program that includes direct or indirect contact with children or students. The record does not explicitly show that the employer's school-based programs included direct or indirect contact with children or students. However, as the school-based programs in question were Head Start programs, which "promote the school readiness of infants, toddlers, and preschool-aged children from low-income families,"<sup>3</sup> it is reasonable to infer from the record that the programs included direct or indirect contact with children. Thus, to the extent that the employer's employees provided services at or for a school-based Head Start program, they were school-based program staff under OAR 333-019-1030(2)(h). Because an "essential function" of claimant's position was to be available for maintenance at all of the employer's sites—including those that constituted school-based programs—claimant was considered to be school-based program staff, and the vaccination requirements under the rule therefore applied to him.

In order for claimant's potential discharge to be considered misconduct, the reason for the potential discharge must have been a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee. The record shows that claimant was aware of the employer's vaccination policy and consciously chose not to comply with it. Therefore, claimant's violation of the policy was willful. The record also shows that the employer's vaccination policy was reasonable, given the continuing threat to public health posed by COVID-19, and the fact that the employer was required to implement the mandates in OAR 333-019-1030 or else face daily fines for noncompliance. The policy also was reasonable because it allowed employees to seek exceptions from vaccination for medical or religious reasons. Claimant's refusal to comply with the vaccination requirements therefore was a willful disregard of the standards of behavior that the employer had the right to expect of claimant.

Claimant's refusal also cannot be excused as an isolated instance of poor judgment. For an act to be isolated, the exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior. OAR 471-030-0038(1)(d)(A). Acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3). OAR 471-030-0038(1)(d)(D). Claimant's refusal to comply with the employer's policy was ongoing, and therefore not isolated, and made a continued employment relationship impossible because the employer could have incurred fines for noncompliance if they continued to employ claimant.

Because claimant's refusal to comply with the employer's policy was a willful disregard of the standards of behavior that the employer had the right to expect of him and was not an isolated instance of poor judgment, it was misconduct. Thus, to the extent that claimant quit in order to avoid what would otherwise have been a potential discharge for misconduct, claimant quit without good cause under OAR 471-030-0038(5)(b)(F).

---

<sup>3</sup> EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.acf.hhs.gov/ohs/about/head-start>. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

Finally, to the extent that claimant voluntarily quit due to the employer's vaccine requirement itself, claimant has not met his burden to show that he quit for good cause. At hearing, claimant expressly stated that his opposition to vaccination was not the result of a medical condition or a sincerely-held religious belief that would have prevented him from being able to be vaccinated. Transcript at 6. Instead, claimant explained that his opposition was due to his belief "to not get the vaccine unless it's absolutely necessary," and that he "[didn't] believe that the vaccine was in the best interest of [his] health or in the best interest of protecting the health of people around [him]." Transcript at 6. Claimant cited no factual basis for these beliefs, nor did he offer evidence of any potentially negative consequences that he might have faced had he become vaccinated. Therefore, the prospect of mandatory vaccination was not a situation of such gravity that claimant had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective December 5, 2021.

**DECISION:** Order No. 22-UI-189850 is affirmed.

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

**DATE of Service: July 1, 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 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 الاستئناف 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.