

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0487**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 11, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective January 16, 2022 (decision # 131532). Claimant filed a timely request for hearing. On March 28, 2022, ALJ Ramey conducted a hearing at which the employer failed to appear, and on April 1, 2022 issued Order No. 22-UI-190329, affirming decision # 131532. On April 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Marquis Care at Newberg employed claimant as a charge nurse from January 12, 2022 until January 20, 2022. The employer operated a skilled nursing facility. Claimant was a licensed practical nurse (LPN).

(2) For the duration of his employment, claimant was in training, as he was not familiar with the employer's systems and had not worked in skilled nursing for 10 years. Claimant's training largely consisted of shadowing other nurses at the facility.

(3) Sometime between January 15, 2022 and January 18, 2022, a face shield that the employer had issued to claimant was stolen.

(4) On multiple occasions during his employment, claimant observed certified nursing assistants failing to use proper hand-washing hygiene during patient care. Claimant also observed other employees discussing patient care in front of other patients, which claimant understood to be violations of the Health Insurance Portability and Accountability Act (HIPAA), and other employees using profanity in front of patients.

(5) On January 20, 2022, claimant was scheduled to shadow a nurse who was unexpectedly absent due to a family emergency. Claimant shadowed other nurses that day, but due to the first nurse's absence

and a series of miscommunications among the nursing staff, claimant was left on his own for a period of about an hour and half during his shift. Claimant was concerned that while he was alone, because he lacked the appropriate training, he would not have been able to respond in an emergency situation, thereby putting patient safety at risk. Additionally, claimant was concerned that he could put his nursing license in jeopardy by being left alone to care for patients if he was inadequately trained. Because of the employer's staffing shortage due to COVID-19, claimant believed that a similar situation could recur if he continued working for the employer.

(6) Later on January 20, 2022, after he left work for the day, claimant sent an email to the facility's human resources department and notified them that he was resigning that day. Claimant decided to resign primarily due to his concerns about being left alone with patients again while he was still not fully trained, which he believed could risk both patient health and his nursing license. Claimant's decision to resign was also partially informed by his other concerns about the facility, such as the theft of his face shield and the improper hand-washing that he had observed. However, claimant would not have quit due to these other factors alone.

(7) Prior to deciding to resign, claimant had not spoken to his direct supervisor about his concerns because she had been out sick. Similarly, claimant did not speak to human resources or the facility's administrator about the matter before quitting.

(8) On January 21, 2022, the facility's administrator called claimant to discuss claimant's resignation email. The administrator told claimant that she had not been aware of claimant's concerns, and would have addressed them if she could have done so. The administrator also asked claimant to take the weekend to reconsider his decision to resign. Claimant told the administrator that he would do so, but did not actually reconsider his decision. Claimant reiterated his original resignation when he spoke to the administrator again on January 24, 2022.

**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.

Claimant voluntarily quit work due to several factors that arose during the short period in which he worked for the employer. The record shows, however, that the factor without which claimant would not have quit at the time that he did, was his belief that he could be putting both patient safety and his nursing license in jeopardy by continuing to work by himself without being fully trained. As the record shows that the employer was short-staffed due to the ongoing COVID-19 pandemic, claimant's concerns that he could be left alone again were reasonable. Further, claimant's concerns that being left alone to care for patients would constitute a risk to both patient safety and his nursing license was a grave

situation, as being left alone with inadequate training could lead to poor patient outcomes or even mortality, which could negatively impact his nursing license and thereby impair future employment prospects. However, despite the gravity of the situation, claimant did not seek reasonable alternatives to quitting.

The record shows that claimant neither attempted to address his concerns about patient safety or the risk to his nursing license with the employer prior to deciding to quit, nor allowed the employer time to remedy the situation before he quit. At hearing, claimant testified that he did not allow the administrator time to address his concerns because it seemed to him that they would not be able to do so due to the employer's staffing shortage. Audio Record at 15:20. However, although the employer was short on staff the record does not show that the employer would have been unable to prevent the scenario on January 20, 2022 from recurring if claimant had made the employer aware of his concerns. Notably, none of the individuals with the authority to ensure that claimant had a nurse to shadow at all times until he was fully trained were aware of the situation until claimant announced his intention to resign via his January 20, 2022 email. Once he did so, the administrator indicated a willingness to intervene. It is reasonable to conclude that the administrator, not wishing to lose another nurse amid a staffing shortage, would have taken the actions available to her in order to retain claimant. Allowing her that opportunity would therefore have been a reasonable alternative to quitting. Therefore, because claimant did not do so, he failed to seek reasonable alternatives. Accordingly, claimant did not show that he faced a situation of such gravity that he had no reasonable alternative but to quit.

Additionally, in his request for hearing, claimant identified administrative rules, promulgated under the Oregon Nurse Practice Act,<sup>1</sup> which he asserted required a "duty to resign" under the circumstances that led him to quit. Exhibit 1 at 1. In particular, claimant's statement suggested that the "duty to resign" derived from OAR 851-045-0040(1) (August 1, 2017), which required, in relevant part, that a licensed nurse:

- (a) Practice within the laws and rules governing the practice of nursing at the level the nurse is licensed;
- (b) Ensure competency in the cognitive and technical aspects of a nursing intervention or a nursing procedure prior to its performance; and
- (c) Self-regulate one's professional practice by:
  - (A) Adhering to professional practice and performance standards;
  - (B) Practicing within the context of care; and
  - (C) Removing one's self from practice when unable to practice with professional skill and safety.

The text of the rule, however, does not explicitly mandate that a licensed nurse remove one's self from the *employment setting* in which they are currently practicing if they are unable to practice with

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<sup>1</sup> ORS 678.010 – 678.445

professional skill and safety. It is reasonable to conclude that the rule is meant to be construed more broadly, and therefore sets forth a professional obligation to remove oneself merely from a *situation* in which the one is unable to practice with professional skill and safety, not to quit one's job entirely. In the context of claimant's circumstances, claimant could have requested that the employer ensure that he is always assigned another nurse to shadow until he is fully trained, and likewise could have refused to continue on a given shift if another nurse was not available to shadow. Therefore, because claimant did not show that the Oregon Nurse Practice Act (and rules promulgated thereunder) required him to quit, and because he did not take less drastic steps in an effort to comply with the rules before quitting, claimant did not show that he faced a situation of such gravity that he had no reasonable alternative but to quit.

For the above reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective January 16, 2022.

**DECISION:** Order No. 22-UI-190329 is affirmed.

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

**DATE of Service: July 8, 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 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  
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