

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0510**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 9, 2022, 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 May 31, 2020 (decision # 140034). Claimant filed a timely request for hearing. On April 6, 2022, ALJ Ramey conducted a hearing, and on April 8, 2022 issued Order No. 22-UI-190903, reversing decision # 140034<sup>1</sup> by concluding that no work separation between the employer and claimant had occurred and therefore claimant was not disqualified from receiving benefits. On April 27, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Johnson, Sid & Co. employed claimant as a carpenter from September 1996 to June 11, 2020.

(2) On June 5, 2020, after claimant had completed his work shift, claimant and the employer's president had a telephone conversation related to claimant's request for a raise. The president declined to give claimant a raise, and the conversation became "heated" after claimant asked the president how much a prior employee made and when the president responded that he did not know, claimant "kinda called him out on that." Transcript at 6. After both parties calmed down, claimant told the president that he was going to take the next week off. The president approved claimant's leave and told claimant to call him on Thursday, June 11, 2020 to discuss where claimant would work on the following Monday. The president never told claimant he was discharged during their conversation and had no reason to believe claimant would not return to work. Claimant believed the employer's unwillingness to give him a pay raise "wasn't that big a deal[.]" Transcript at 27.

(3) On June 11, 2020, claimant attempted to call the president as instructed, but the president did not answer claimant's call. The president frequently was on his phone handling work related matters and it

<sup>1</sup> The order under review stated that it was reversing the "November 8, 2021" administrative decision. Order No. 22-UI-190903 at 2. The reference to the "November 8, 2021" administrative decision is presumed to be a scrivener's error and the order under review meant to refer to decision # 140034.

was not unusual for him not to call people back if they did not leave a message for him. Claimant did not leave the president a message. Claimant did not attempt to contact the employer after the June 11, 2020 phone call attempt and did not return to work for the employer. The employer never called claimant back.

(4) On or about June 17, 2020, claimant's coworker told claimant that the employer's president "is not bringing you back." Transcript at 13. The coworker was not involved in any decisions to hire, discharge, or lay off employees and was not authorized to speak for the employer on those issues.

(5) During this time period, claimant was concerned about the COVID-19 pandemic, but would have continued to work for the employer if the president had called claimant back. Claimant believed that the president's failure to call claimant back was a "big deal" and that had the president called claimant back "[he would] still be working [for the employer]." Transcript at 27. The employer had continuing work available for claimant to perform.

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

**Nature of the work separation.** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

The order under review concluded that no work separation between the employer and claimant occurred because claimant did not tell the employer that he quit, the employer did not tell claimant he was discharged, and because the employer still had continuing work available for claimant which claimant was willing to perform. Order No. 22-UI-190903 at 2. The record does not support this conclusion.

The record shows that on June 5, 2020, the employer's president approved claimant's leave request during a telephone call while also instructing claimant to contact him on June 11, 2020 to discuss where claimant would work the following Monday. The employer did not discharge claimant during the call, and had continuing work available for claimant to perform. On July 11, 2020, claimant attempted to call the president as instructed, but when he was unsuccessful, claimant did not leave a message for the president, and neither attempted to contact, nor worked for the employer, again. The record shows that claimant regarded the president's failure to call him back as a "big deal" and that but for the president's failure to return the call, claimant would "still be working [for the employer]." Transcript at 27. Under these circumstances, the record shows that claimant could have continued to work for the employer after June 11, 2020, without being impeded by the employer from doing so, but claimant was no longer willing to continue to work for the employer. As such, the nature of the work separation is a voluntary leaving that occurred on June 11, 2020.

**Voluntary quit.** 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). “[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 record shows that claimant quit work because after he called the employer’s president on June 11, 2020, the president never called claimant back. In fact, claimant testified that although he had sought a pay raise from the employer, and that the president’s unwillingness to give him a raise led to a “heated” telephone conversation on June 5, 2020, both sides ultimately calmed down and the pay raise “wasn’t that big a deal” to claimant. Transcript at 6, 27. What was a “big deal” to claimant, however, was the president’s failure to call claimant back after claimant called the president on June 11, 2020. Claimant testified that but for this failure, claimant would still be working for the employer. Transcript at 27.

Claimant failed to show, from an objective point of view, that he left for good cause because he did not show that the employer’s failure to call claimant back created a grave work situation for claimant. Although claimant may have believed the president’s failure to call him back was significant, the record evidence shows that after he tried to call the president, claimant did not leave a message for the employer to return his call and that it was not uncommon for the president not to return calls when no message had been left. Further, claimant made no additional attempts to call the president and may no additional efforts to return to work. No reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would believe they were facing a grave situation under these circumstances, nor would they leave work based upon them. As such, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective June 7, 2020.

**DECISION:** Order No. 22-UI-190903 is set aside, as outlined above.

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

**DATE of Service: July 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.

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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 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  
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