

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0641**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective September 13, 2020 (decision # 90927). Claimant filed a timely request for hearing. On May 12, 2022, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on May 16, 2022 issued Order No. 22-UI-193769, modifying<sup>1</sup> decision # 90927 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective September 20, 2020. On June 5, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant 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). 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 him 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).

Claimant also asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Mineral Creek Logging & Hauling LLC employed claimant as a yarder engineer from approximately mid-February 2019 until about September 20, 2020.

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<sup>1</sup> The order under review stated that "the administrative decision mailed January 21, 2021 is *affirmed*." Order No. 22-UI-193769 at 3 (emphasis added). However, as the order under review concluded that claimant's effective disqualification date was different than the date found in decision # 90927, the order *modified* the administrative decision.

(2) The employer's operations were based in Grants Pass, Oregon and the surrounding area. For the duration of his employment, claimant resided in Veneta, Oregon, approximately 135 miles away from the worksite. When he started working for the employer, claimant initially stayed in a hotel during the workweek and returned home to Veneta on the weekends. After a few months, claimant bought a recreational vehicle, which he parked near the work site and stayed in during the workweek, still returning home to Veneta on the weekends.

(3) Claimant's work schedule, and absence from Veneta during the workweek, made it difficult for claimant to engage in activities other than work, and he spent much of his time home on the weekends preparing for the following workweek. As a result, claimant's ability to spend time with family members and friends was significantly limited. Additionally, at the time he was hired, claimant had recently started dating a woman. Over time, the relationship grew more serious. Eventually, claimant's girlfriend grew frustrated with the fact that he was only available to spend time with her on the weekends. Claimant also had little capacity to engage in recreational activities or perform maintenance on his home because he was away from home so much.

(4) On or around September 14, 2020, the employer temporarily laid claimant off because the employer was required to curtail their operations due to wildfires in the area.

(5) While claimant was temporarily laid off, he contacted the Department and inquired about his eligibility for benefits. The representative to whom he spoke advised him that if he voluntarily quit working for the employer, it was "not a cause for denial of benefits" because the employer was located more than 55 miles away from claimant's residence. Audio Record at 19:03.

(6) On or around September 20, 2020, claimant contacted the employer and notified them that he would not be returning to work once operations resumed. Claimant decided to quit because the distance between home and the work site impacted his ability to spend time with his family, friends, and girlfriend, and because he was unable to engage in recreational activities or perform needed maintenance on his home when he was away from home so much. Claimant's decision to quit was also informed by the information that the Department representative gave to him while he was temporarily laid off.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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 because of the distance between his home and the employer's worksite, and the limitations that it imposed on his personal life. In particular, because claimant spent his entire workweek in the Grant's Pass area, and spent much of his time at home in Veneta preparing for the

following workweek, claimant had little time available to spend with his family, friends, and significant other. Further, he could not engage in other activities that he would otherwise have spent his time doing had he been home. The order under review concluded that this did not constitute a situation of such gravity that claimant had no reasonable alternative but to quit, and further concluded that claimant did not seek reasonable alternatives to quitting, such as “asking his employer if he could work part time or on a different schedule[.]” Order No. 22-UI-193769 at 3. The record does not support these conclusions.

First, the record shows that claimant’s circumstances were grave. In order to work for the employer, claimant spent the majority of each week away from home where he was unable to engage in the relationships and activities that otherwise would have been available to him. This was a grave circumstance because continuing to work for the employer would require claimant to neglect relationships that were important to him, neglect the condition of his home, and forgo enjoying activities other than work. Further, before claimant quit, he spoke to a Department representative about eligibility for benefits, and was told that if he quit he would not be disqualified because his commute distance was over 55 miles. Under such circumstances, a reasonable and prudent person, who was away from home most of the time, and who was specifically advised by the Department that he could quit work without being disqualified from benefits, would not continue to work for the employer for an additional period of time.

Finally, although the record does not show that claimant sought any alternatives to quitting, neither does it show that any alternatives to quitting were *available* to claimant. The order under review suggested that asking the employer if he could work part time or on a different schedule would have constituted a reasonable alternative to quitting. However, in order to be considered a reasonable alternative to quitting, the record must show that the alternative being considered was actually available. *See, e.g., Fisher v. Employment Dept.*, 139 Or.App. 320 (1996). The employer did not appear at the hearing and did not offer any evidence into the record, and claimant’s testimony does not show that the employer would have even considered such a request had claimant made it. Even if the record did so show, however, neither of those options would have been likely to meaningfully address claimant’s concerns. Neither does the record indicate that any other alternatives were available to claimant. Because claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit, he voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-193769 is set aside, as outlined above.

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

**DATE of Service:** August 30, 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.

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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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