

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0703**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 29, 2022, 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 March 6, 2022 (decision # 134905). Claimant filed a timely request for hearing. On June 13, 2022, ALJ Wardlow conducted a hearing at which the employer failed to appear, and on June 14, 2022 issued Order No. 22-UI-196107, affirming decision # 134905. On June 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Portable Welding & More, Inc. employed claimant as a welder and fitter from May 2021 until March 7, 2022. The employer paid claimant \$26.00 per hour.

(2) Around mid-February 2022, claimant began considering returning to work for a former employer. Around that time, claimant gave the employer notice that he intended to resign and return to work for the former employer. The former employer had not yet offered claimant a job.

(3) On March 5, 2022, the former employer interviewed claimant for a job opening. The job required that claimant pass both a drug test and a physical exam. Claimant completed the drug test the same day as the interview. The former employer offered claimant the job shortly thereafter, contingent upon claimant passing the physical examination.

(4) The new job was scheduled to begin on March 9, 2022. The position was full time, paid \$28.56 per hour, and claimant expected the position to be permanent.

(5) On March 7, 2022, claimant completed his last day of work for the employer.

(6) On March 8, 2022, claimant passed the physical exam for the new job. Claimant started the new job the following day.

**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). A claimant who leaves work to accept an offer of other work “has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.” OAR 471-030-0038(5)(a) (September 22, 2020). In pertinent part, the Department does not consider a job offer to be definite “if [it] is contingent upon... [such things as] passing a drug test, background check, credit check, and/or an employer receiving a contract.” Oregon Employment Department, UI Benefit Manual §442 (Rev. 04/01/10).

Claimant voluntarily quit working for the employer in order to accept a new role with a former employer. In order for this to be considered good cause for voluntarily quitting work, claimant must show that his circumstances satisfied the provisions of OAR 471-030-0038(5)(a). The record shows that the new job was both reasonably expected to continue and paid more than the job claimant was leaving. The record also shows that the new job was to begin in the shortest length of time as could be deemed reasonable under the circumstances, as it was scheduled to begin only two days after claimant’s last day of work for the employer. However, claimant has not met his burden to show that the offer was definite.

For the job offer to be definite, it must not have been contingent, such as upon a drug test or background check, at the time that the individual left work. Claimant left work on March 7, 2022, after having passed the drug test required for the new job. However, the record contains conflicting information as to whether claimant had completed the physical exam, also required for the new job, by the time he left work on March 7, 2022. At hearing, claimant’s testimony suggested, variously, that the physical exam was conducted either on or around March 6, 2022 or on March 8, 2022. Audio Record at 13:55, 16:02. Claimant never clearly stated on what date the physical exam was conducted, or whether it was still pending at the time that he left work. However, as discussed below, claimant’s other testimony suggests that the exam was, more likely than not, conducted on March 8, 2022, and the facts have been found accordingly.

The record shows that claimant gave notice of his intent to quit well in advance of receiving a job offer—or even an interview—from his former employer. Claimant did not explicitly state why he gave notice before the offer was made to him, explaining only that he had worked for the other employer previously and that he had spoken to some of their employees about returning to work for them. Audio Record at 15:15. Further, claimant at hearing sought to rebut that the offer was “contingent [on his] passing the physical” by testifying that he had “nothing wrong” with him so he knew he was going to “pass the physical without any issues at all.” Audio Record at 19:14.

There is no dispute in the record that claimant made the decision to give the employer notice of resignation before he actually knew that he had another job waiting for him. Although this does not conclusively prove that he acted similarly in leaving work before completing the physical exam, it does suggest that he was inclined to quit regardless of whether any contingencies remained. Further, claimant’s testimony that he had “nothing wrong” with him so he knew he would pass the physical, indicate that claimant left work before he had completed the physical exam because he strongly believed he would pass the physical. Had claimant completed the exam before leaving work, it would have made

considerably more sense if he instead testified that, in fact, he had already completed the exam before he left work. As claimant stated it, however, it is more reasonable to conclude that claimant believed the offer was not genuinely contingent because he thought he would pass the exam. Taken together, the record shows that, more likely than not, claimant left work before he completed the physical exam. Further, even if claimant's *belief* that he would pass the exam was reasonable, claimant's *belief* he would pass all contingencies does not make the offer definite. Therefore, the physical exam that remained pending after claimant left work was a contingency that needed to be resolved before the offer of work became definite. Because the offer of work was not definite, claimant voluntarily quit work without good cause under OAR 471-030-0038(5)(a).

For the above reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective March 6, 2022.

**DECISION:** Order No. 22-UI-196107 is affirmed.

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

**DATE of Service:** September 21, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
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