

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0705**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 28, 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 June 7, 2020 (decision # 154425). Claimant filed a timely request for hearing. On June 7, 2022, ALJ Kaneshiro conducted a hearing and issued Order No. 22-UI-195569; reversing decision # 154425 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On June 18, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Prems Gas and Mini Mart, Inc. employed claimant as a cashier from March 2019 until June 10, 2020.

(2) On June 6, 2020, two customers approached claimant and stated that they wanted to be the “next notch on her belt.” Transcript at 5. Claimant knew both customers, and understood them to be soliciting her for sex. When claimant discussed this incident with her supervisor’s stepdaughter, she was informed that the incident likely occurred because two other employees had been telling customers that claimant “has sex with married men” and “sells herself.” Transcript at 5.

(3) Claimant informed her manager that the other employees had spread sexual rumors about her on June 6, 2020 and requested that he set a conflict mediation meeting with the other employees. She also told the manager that if he did not address this she would “not be attending his schedule.” Transcript at 6.

(4) On June 7, 2020, claimant again spoke with the manager regarding her coworkers’ statements. The manager told claimant to ignore the comments, and that he had not and would not schedule a meeting to address the harassment. Claimant also discovered that the manager had been making derogatory statements about employees to her coworkers.<sup>1</sup>

<sup>1</sup> The record is unclear as to whether the manager’s derogatory statements were in reference to claimant or other employees.

(5) On June 8, 2020, claimant began working her scheduled shift, but her manager sent her home. Claimant believed the manager sent her home because she was “too emotional.” Transcript at 27. Claimant eventually returned to work and completed the rest of her shift.

(6) Claimant’s manager did not schedule a conflict mediation meeting between claimant and her coworkers. Afterwards, the claimant reports that her coworkers “started harassing me outside of work, because I snitched.” Transcript at 11.

(7) On June 10, 2020, claimant informed her manager that she was not going to report to work because the manager had refused to set up a conflict mediation meeting regarding the June 6, 2020 incident. Claimant also requested her final paycheck.

(8) The employer’s owner lives in California and avoids managing or resolving employee conflicts and concerns. Only the store manager had the owner’s telephone number, and no other employees had a method of contacting him. Claimant did not attempt to contact the owner prior to her failure to report to work on June 10, 2020. If claimant had wanted to work her shift on June 10, 2020, the employer would have allowed her to do so.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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) (September 22, 2020). 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).

While the record does not show that claimant ever explicitly told the employer that she was quitting, the record nevertheless shows that claimant voluntarily quit work. On June 6, 2020, claimant told her manager that if he did not grant her a conflict mediation meeting, she “[would] not be attending his schedule.” Transcript at 5. In the context of the circumstances at that time, this statement suggests that claimant had decided that she would not continue to work her scheduled shifts if she was not granted a meeting. Further, after claimant’s shift concluded on June 8, 2020, claimant told the manager that she would not continue to work for him if he did nothing to address her concerns. On June 10, 2020, claimant did not report for her scheduled shift, and requested her final check at that time. Taken as a whole, these statements and actions show that claimant was not willing to continue working for the employer for an additional period of time. By contrast, the record shows that if claimant reported to work on June 10, 2020, the employer would have allowed claimant to work. Because claimant was not willing to continue working for the employer for the additional period of time, even though the employer would have permitted her to do so, the record shows that claimant voluntarily quit work on June 10, 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.

Claimant and the employer presented different accounts of the events that led to claimant’s decision to quit. According to claimant, two customers attempted to solicit sex from her at work. Transcript at 5. She then spoke with her supervisor’s stepdaughter about the incident, the supervisor’s stepdaughter informed her that two other employees had been telling customers that claimant “sells herself” and “sleeps with married men.” Transcript at 5. Claimant further testified that she brought this to the attention of the manager, who refused claimant’s request to hold a conflict mediation meeting and instead told her to ignore the comments. Transcript at 6. The employer’s witness contradicted claimant’s account, testifying that none of these incidents occurred and that claimant was likely not coming to work because of a conviction for driving under the influence of intoxicants that she had received several months earlier. Transcript at 17. The employer’s witness also testified that they believed claimant had been coming into work intoxicated and that this may have caused claimant to stop coming to work on June 10, 2020. Transcript at 17. Claimant testified to her own first-hand knowledge of the events in question, whereas the employer’s witness does not appear to have been present for at least some of the events, and some of their testimony appeared to be entirely speculative. As such, claimant’s testimony is entitled to more weight, and the facts have been found in accordance with claimant’s testimony.

Claimant had good cause to voluntarily quit working for the employer. Claimant’s coworkers were spreading sexually-charged rumors about claimant to customers and this led to customers attempting to solicit sex from claimant at work. Claimant brought this to the manager’s attention, but the manager refused to take steps to address it. On her following shift, claimant’s manager sent her home in the middle of her shift, which claimant believed was because she had been too “emotional” while she was working. She eventually returned to complete the shift and again requested that her manager address the harassment. Afterwards, claimant reports that her coworkers “started harassing me outside of work, because I snitched.” Transcript at 11. Based on the conduct from claimant’s coworkers and their impact on customers’ conduct toward claimant, claimant’s situation was grave.

The record also shows that claimant had no reasonable alternative but to quit. Claimant attempted to address the harassment by reporting the behavior to her manager and requesting a conflict mediation meeting. In response, the manager refused to schedule a meeting and told claimant to ignore the comments. Additionally, the owner testified that he was an absentee owner and relied on the manager to resolve personnel conflicts, and that non-managerial employees did not have a way to contact him. Transcript at 19-20, 23. Therefore, claimant could not have contacted the owner to ask him to intervene, and the record does not show that claimant had any other means of pursuing a remedy to the harassment through the employer. In such circumstances, no reasonable and prudent person would have continued working for the employer for an additional period of time.

Because claimant quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 22-UI-195569 is affirmed.

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

**DATE of Service: September 9, 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 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  
[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.