

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0759**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct connected with work and was disqualified from receiving unemployment insurance benefits effective September 19, 2021 (decision # 100304). Claimant filed a timely request for hearing. On February 23, 2022, ALJ Blam-Linville conducted a hearing, and on February 25, 2022 issued Order No. 22-UI-187283, affirming decision # 100304 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 19, 2021.<sup>1</sup> On March 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB) of Order No. 22-UI-187283. On May 10, 2022, EAB issued 2022-EAB-0298 reversing and remanding Order No. 22-UI-187283 for development of the record. On June 22, 2022, ALJ Blam-Linville conducted a hearing, and on June 24, 2022, issued Order No. 22-UI-196833 affirming decision # 100304 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 19, 2021.<sup>2</sup> On July 6, 2022, claimant filed an application for review with EAB of Order No. 22-UI-196833.

**FINDINGS OF FACT:** (1) Beaverton School District # 48 employed claimant as an educator in their independent skills center from September 1, 2014 until September 20, 2021.

(2) On September 4, 2021, the employer's employees, including claimant, were scheduled to return to work for the fall semester. As a public school employee, claimant was mandated to get vaccinated against COVID-19 or provide documentation of a medical or religious exception to vaccination by

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<sup>1</sup> Order No. 22-UI-187283 stated that it "modified" decision # 100304. Order No. 22-UI-187283 at 3. However, Order No. 22-UI-187283 affirmed decision # 100304 because it did not change the result of decision # 100304—a disqualification from benefits effective September 19, 2021—but only the reason for the administrative decision's result.

<sup>2</sup> Order No. 22-UI-196833 stated that it "modified" decision # 100304. Order No. 22-UI-196833 at 4. However, Order No. 22-UI-196833 affirmed decision # 100304 because it did not change the result of decision # 100304—a disqualification from benefits effective September 19, 2021—but only the reason for the administrative decision's result.

October 18, 2021. Claimant was opposed to receiving the COVID-19 vaccine. Claimant had previously been infected with COVID-19, and believed, paradoxically, both that she had gained immunity from the virus as a result of the prior infection and that receiving the vaccine could cause her to become infected with COVID-19 again. Beginning on September 4, 2021, claimant either called in sick or failed to report for her scheduled shifts without calling in first.

(3) In early September 2021, claimant's son, who was nineteen years old and was soon to begin college, became infected with COVID-19. His symptoms were severe, but started to improve by about September 10 or 12, 2021. On September 12 and September 19, 2021, claimant's son took the COVID-19 vaccine. Soon thereafter, claimant's son became "really sick again" with COVID-19 symptoms. June 22, 2022 Transcript at 8. Claimant cared for her son during his illness.

(4) On September 17, 2021, claimant exhausted her paid leave time. On September 20, 2021, the employer's human resources (H.R.) executive called claimant. Claimant explained that she wanted to work from home rather than work in person at the school, but the H.R. executive stated that was not an option. The H.R. executive explained that claimant could avoid working in person at the school but remain employer-attached by taking an unpaid leave of absence for the school year. The H.R. executive also explained that claimant could seek a medical exemption from the vaccine requirement and, if granted, could work in person without getting vaccinated but would have to submit to weekly testing via swabbing her nose. Claimant did not want to take unpaid leave and was not interested in seeking a medical exemption because she thought swabbing her nose would injure her nose.

(5) Following the conversation with the H.R. executive, claimant decided to quit working for the employer, in part, because she did not want to get vaccinated against COVID-19, and did not want to work in person at the school and risk getting or spreading COVID-19.

(6) However, also as of September 20, 2021, claimant was taking care of her son who was ill with COVID-19. Another reason claimant decided to quit working for the employer was because she was unable to work because she was taking care of her son. On September 20, 2021, claimant sent an email to the H.R. executive advising that she was retiring from her position effective immediately.

(7) On September 27, 2021, claimant's son began college and tested positive for COVID-19 at the college's clinic.

**CONCLUSIONS AND REASONS:** Claimant quit work because of a COVID-19 related situation and is not disqualified from receiving unemployment insurance benefits.

ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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.

However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes the following:

\* \* \*

(e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine[.]

The order under review concluded that claimant quit working for the employer because of her opposition to the vaccine mandate, which was a reason for quitting that was without good cause. Order No. 22-UI-196833 at 3-4. The order under review is reversed because the record shows that one of the reasons claimant quit working for the employer was because of a COVID-19 related situation as defined by the OED Temporary COVID-19 Rule (1).

Claimant quit working for the employer on September 20, 2021. The reasons claimant quit included that she did not want to get vaccinated against COVID-19 and she did not want to work in person at the employer's school. This decision need not address whether quitting for these reasons was without good cause. This is because another reason claimant quit was because of a COVID-19 related situation, and under Temporary COVID-19 Rule (1)—which remained in effect as of September 20, 2021 and did not expire until after September 25, 2021—a person who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits.

Specifically, the record shows that claimant quit work because she was unable to work because she had to stay home to care for her son who was suffering from COVID-19. Claimant's son was infected with COVID-19 in late August or early September 2021, and although his symptoms initially began to improve, he got "really sick" by September 19 or 20, 2021 and was confirmed to remain infected by the college clinic on September 27, 2021. June 22, 2022 Transcript at 8. The record further shows that as of September 20, 2021, claimant was unable to work because she was caring for her son during his illness. Thus, the record is sufficient to conclude that claimant quit working for the employer because of the COVID-19 related situation set forth by OED Temporary COVID-19 Rule (1)(e).

Accordingly, claimant quit work because of a COVID-19 related situation and, therefore, is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-196833 is set aside, as outlined above.

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

**DATE of Service: October 11, 2022**

**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.

**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 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**  
 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)

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