

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0945**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 17, 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 8, 2022 (decision # 105034). Claimant filed a timely request for hearing. On August 25, 2022, ALJ Turner conducted a hearing, and on August 26, 2022 issued Order No. 22-UI-201402, affirming decision # 105034. On September 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Costco Wholesale Corporation employed claimant part-time as a front-end associate at the employer's wholesale store from February 17, 2022 through May 11, 2022.

(2) The employer informed claimant at hire that he was required to serve a 90-day probationary period during which he was subject to termination if absent for three days.

(3) The employer granted claimant leave to take a vacation and he was off work from April 17, 2022 through May 2, 2022. During this vacation, claimant contracted COVID-19. He promptly notified a supervisor, who extended his leave through May 9, 2022. The supervisor told claimant that the employer's policy was to expect him back at work after five days if asymptomatic, regardless of whether he continued to test positive.

(4) On May 9, 2022, claimant continued to test positive for COVID-19. He notified the employer, who left claimant on the schedule for May 10, 2022. On May 10, 2022, claimant left a series of messages with the employer stating that he continued to test positive for COVID-19. He became increasingly concerned about his absences potentially violating the employer's attendance policy. The person who took claimant's messages gave claimant information to contact human resources to address his concerns. Claimant decided not to do so because he did not want to be "creating a stir" during his probationary period. Transcript at 15. Though the employer's policy called for claimant to consider any member of management his supervisor, and he was not assigned a specific supervisor, claimant insisted on leaving

messages only for the manager who approved his initial COVID-19 leave, despite this manager failing to return his calls. Claimant remained scheduled for work on May 11, 2022.

(5) On May 11, 2022, claimant again called to report that he continued to test positive for COVID-19 and left a message for the manager. He then submitted a resignation letter to the employer because he was frustrated at having to leave messages for the manager who did not return his calls and felt that the employer did not care about his health. He believed the employer would discharge him that day due to their attendance policy. However, the only reason cited for quitting in his resignation letter was his desire to make his pre-existing health conditions a priority.

(6) At no time did the employer indicate to claimant that his continued absences were unexcused. The employer made no attempts to discipline claimant and had no plans to discharge him at the time of his resignation.

**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). “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).

Claimant voluntarily quit work by submitting his resignation letter on May 11, 2022. Though the letter only cited general health concerns relating to pre-existing conditions as his reason for quitting, claimant also quit, in part, because he was fearful of being discharged upon his third absence due to illness during the probationary period. He was also upset by difficulty communicating with management about this issue and felt that the employer was indifferent to his health. Further, claimant recounted in detail how firmly the policy on absences was stressed to him when his employment began. Transcript at 13. Claimant called numerous times per day out of concern over the impact of his absences on his continued employment, and was increasingly upset over the lack of response. This evidence is consistent with claimant’s subjective claims of fear of imminent discharge for violation of the employer’s attendance policy.

However, claimant’s fear was objectively unreasonable. The employer’s witness testified that there were no plans to discharge him at the time of his resignation. Transcript at 20. There was no evidence that claimant received any kind of warning or discipline for his absences. He continued to be scheduled for work the day following each absence, indicating that the absences were excused. More likely than not, the employer’s failure to promptly return claimant’s calls or take any action against him was because the absences were approved or the employer was indifferent about claimant’s failure to report to work or was otherwise focused on other matters. A reasonable and prudent person would not have believed, as claimant did, that he was about to be discharged on May 11, 2022.

The record does not show that claimant’s objectively unreasonable fear of being discharged posed a situation of such gravity that claimant had no reasonable alternatives to leaving work. Claimant had the reasonable alternative of contacting human resources to address his concerns over the absences, but

declined to do so for fear of “creating a stir.” Transcript at 15. The employer’s policy was to consider any manager claimant’s supervisor, but instead of trying to speak with any other manager, he insisted on communicating only with the manager who initiated his COVID-19 leave, even though claimant found him insufficiently responsive. Claimant could have continued calling in each scheduled day until he tested negative, as the employer had voiced no objection to his doing so and continued to schedule him for shifts. He was within a week of completing the 90-day probationary period, and may have been subject to a less restrictive attendance policy thereafter had he not resigned.

Claimant implied that because “there was no end in sight,” to his positive COVID-19 tests, that pursuing alternatives to quitting would not have been successful. Transcript at 12. Alternatives may be deemed futile if considering them would be fruitless, or if the employer was unwilling to consider them. If an issue regarding the futility or fruitlessness of an alternative is raised in the record, it must be resolved before concluding that claimant did not have good cause to quit work. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996); *Bremer v. Employment Division*, 52 Or App 293, 628 P2d 426 (1981). Claimant testified that he continued to test positive for COVID-19 for one and one-half months after infection and that his doctor advised him not to return to work until he tested negative. Transcript at 12. Claimant believed that he would not have been granted leave past May 10, 2022, due to his probationary status and short tenure with the employer. However, the evidence shows that the employer was willing to consider exceptions to the three-absence limit in the attendance policy, as shown by allowing claimant time off from April 17, 2022, through May 2, 2022, for vacation, and May 3, 2022, through the time of his resignation, for illness. The employer demonstrated through this flexibility that requesting additional time off until a negative test result was obtained would not have been futile.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective May 8, 2022.

**DECISION:** Order No. 22-UI-201402 is affirmed.

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

**DATE of Service:** November 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.

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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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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