

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0988**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 26, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective February 9, 2020 (decision # 112152). Claimant filed a timely request for hearing. On September 15, 2022, ALJ Amesbury conducted a hearing, and on September 21, 2022 issued Order No. 22-UI-203206, modifying decision # 112152 by concluding that claimant was disqualified from receiving benefits effective January 12, 2020. On September 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Happy Tales employed claimant as a dog washer from January 2, 2020 until January 17, 2020. Claimant worked in the same position for 15 years, but in January 2020 the ownership of the business changed.

(2) Claimant did not have a consistent schedule. Claimant had set days of the week, when she could potentially work, but was not guaranteed work on each of those days. Claimant either physically checked the schedule when she was in at work, or called the employer to determine if there was any work.

(3) The amount of work that claimant received varied depending on the season. January was historically the slow season and claimant occasionally had zero or only one appointment scheduled on the days that she was available to work.

(4) Around January 17, 2020, claimant and the employer had a telephone conversation regarding the amount of work the employer had. Following this telephone conversation, claimant never worked for the employer again, never went to work in person to check the schedule, and never called to check the schedule.

(5) On January 17, 2020, claimant received her last check from the employer. When claimant received this check, the employer still had work available and would have allowed claimant to continue working.

**CONCLUSIONS AND REASONS:** Claimant quit working for the employer without good cause and is disqualified from receiving benefits.

**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). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The employer and claimant disagreed about several key facts surrounding a phone call that led to the work separation. However, under either account of this phone call, the work separation was a quit.

According to the employer, around January 17, 2020, claimant called the employer to check their schedule for the day. The employer then informed claimant that there was only one dog scheduled that day. Upon learning that there was only one appointment, the employer testified that claimant told the employer “that it wasn’t worth her time to come in. And that she felt it would be a better fit for her to find something with more of a regular, steady schedule.” Transcript at 33. According to the employer, claimant never called in to check her schedule again and only returned to work to pick up her final check. The employer testified that they were understaffed and still had work for claimant if claimant would have been willing to return. Under these facts, there was work available and claimant could have continued to work for the same employer for an additional period of time. Therefore, the work separation is a quit.

Claimant, on the other hand, testified that the employer called and told her that it probably would not benefit claimant to come into work because there was only one appointment. The employer then told claimant “if I needed anything to call her.” Transcript at 7. Claimant understood the phrase “if I needed anything to call her” to be the employer telling claimant “I don’t want you here.” Transcript at 20. Based on this interpretation, claimant never called in for her schedule and never went in to see her schedule ever again. She received her last check on January 17, 2020, and otherwise never returned to the business.

On claimant’s account of the final phone call, the work separation was still a voluntary quit. The employer never prohibited claimant from working an additional period and testified that there was additional work claimant could have done. Claimant may have believed that the employer’s statement revealed that the employer did not want claimant there, but there is no evidence on the record that the employer intended this interpretation. Further, claimant did not present evidence to contradict the

employer's claim that there was additional work available to claimant when claimant stopped calling and stopped coming in.

The record therefore establishes that claimant quit working for the employer on January 17, 2022.

**Voluntary Leaving.** 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. Per OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work.

Either account of the final phone call results in a finding that claimant quit working for the employer without good cause. Under the employer's account, claimant told the employer they quit to pursue a more consistent schedule. While a more consistent schedule may have been desirable, there is no evidence in the record to show claimant's schedule made the work for the employer unsuitable for her. Therefore, under the employer's account of the final phone call, claimant left suitable work to seek other work, which is without good cause under OAR 471-030-0038(5)(b)(A).

Claimant's account, on the other hand, was that she stopped calling in and checking the schedule because her employer removed her from a specific shift and told her that she should call if she needed anything. Claimant testified that she believed this to mean the employer did not want her to continue working there. However, the employer's behavior was not such that any reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that she was discharged. Such a person would have asked the employer to clarify their intentions, and the record shows that had claimant done so, she could have continued working for the employer for an additional period of time.

Though claimant and employer disagreed about crucial facts, under either version of events, claimant quit working for the employer without good cause and is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 22-UI-203206 is affirmed.

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

**DATE of Service:** December 7, 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

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## 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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