

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1020**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 6, 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 12, 2022 (decision # 72003). Claimant filed a timely request for hearing. On September 20, 2022, ALJ Krause conducted a hearing at which the employer failed to appear, and on September 29, 2022 issued Order No. 22-UI-203850, affirming decision # 72003. On October 5, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument to the extent it was based on the record.

**FINDINGS OF FACTS:** (1) Terrafirma Foundation Repair Inc. employed claimant as the director of sales from December 6, 2021, through June 15, 2022.

(2) Upon hire, claimant and the employer agreed to a base salary of \$140,000 per year, plus a commission of one tenth of one percent of the employer's net sales. Both parties estimated claimant's share of the commission at this time to be approximately \$50,000 per year.

(3) By May 2022, the employer unilaterally changed the terms of claimant's commission compensation so that if the employer did not have net sales of at least \$50,000,000 in the year, claimant would not receive any commission.

(4) Though claimant was the director of sales, she felt that the employer did not give her sufficient authority over operations to ensure that the sales goal of \$50,000,000 would be met.

(5) On June 1, 2022, claimant tendered her resignation because she was dissatisfied with her compensation due to the change in the commission structure, as well as her lack of authority to achieve the sales goal necessary to receive the commission under the new terms. She worked a notice period ending June 15, 2022.

**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).

OAR 471-030-0038(5)(d) provides in pertinent part:

If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual's normal labor market area. The median rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

\* \* \*

(B) An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission.

\* \* \*

(D) If the Employment Department cannot determine the median rate of pay, the provisions of OAR 471-030-0038(4) apply.

Claimant testified that the employer altered only the calculation method of her commission, not her base salary. Transcript at 15. Even if the employer eliminated the commission entirely, by operation of OAR 471-030-0038(5), that change in pay would not be considered a reduction in pay. Because claimant did not suffer a reduction in pay under that definition, the Department is not required to conduct an analysis of the median rate of pay.

The situation also cannot be considered good cause for leaving work under the provisions of OAR 471-030-0038(4). Claimant’s dissatisfaction with such a significant change to her overall compensation is understandable given her qualifications, experience, and initial agreement with the employer. However, she was still earning a salary of \$140,000 per year, compared to no earnings once she left work. This situation was not sufficiently grave that she had no reasonable alternative but to leave work.

The order under review concluded that claimant had a reasonable alternative to leaving work of continuing to work while she searched for another position with compensation she found satisfactory. Order No. 22-UI-203850 at 2. The order likely did not mean to imply that claimant should have sought other work during hours she was expected to be performing work for the employer. However, continuing to work until a claimant has found other work is not a reasonable alternative to quitting work.

*Hill v. Employment Dep't.*, 238 Or App 330, 243 P3d 78 (2010). However, continuing to work for a salary of \$140,000 per year, regardless of whether she searched for other work on her own time, was a reasonable alternative to quitting even if claimant felt she deserved better compensation.

For the above reasons, claimant voluntarily quit work without good cause, and is disqualified from receiving benefits effective June 12, 2022.

**DECISION:** Order No. 22-UI-203850 is affirmed.

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

**DATE of Service:** December 15, 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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