

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1025**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause, disqualifying her from receiving unemployment insurance benefits effective June 26, 2022 (decision # 140030). Claimant filed a timely request for hearing. On September 22, 2022, ALJ Krause conducted a hearing, and on September 30, 2022 issued Order No. 22-UI-203915, setting aside decision # 140030 and concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. On October 6, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) All Families Welcome LLC employed claimant from February 28, 2022, through June 27, 2022. She began as a front desk receptionist, but was working as a bookkeeper until the day of separation.

(2) While working the front desk position, claimant told the employer that the public contact involved in the position caused her anxiety, and asked for different work. The employer reassigned claimant to a bookkeeping project putting the employer's financial records in order.

(3) On the morning of June 27, 2022, claimant received an automated notice while on her way to work from the employer's payroll software, leading claimant to believe that a paycheck had been issued to her, even though it was not a scheduled payday. Upon arriving at work, she was confronted by the employer about their recent discovery that claimant had used her access as a bookkeeper to add 80 hours of paid time off to her balance that she had not earned. The employer accepted claimant's explanation that this occurred due to a misunderstanding and decided not to discipline her.

(4) Moments later, claimant advised that she was going to interview for a state job as a “family coach.” Transcript at 18. Claimant also told the employer that she had completed updating and organizing the employer’s financial records. She said that thereafter she would only need to spend about ten hours per week on bookkeeping responsibilities. The employer decided to outsource this work to an accountant.

(5) Immediately after these conversations, claimant stated she wanted to continue working for the employer while she pursued the state job or other work. The employer offered to allow claimant to return to her original position at the front desk. Claimant declined, citing her anxiety. She was alternately offered light maintenance work at the employer’s facility, which she declined, citing health reasons.

(6) The employer’s managers then held a meeting that morning at which they would determine if there was any other type of work they could offer claimant. Claimant was assigned to work at the front desk while the meeting was being held in another location. Before the meeting concluded, claimant told a coworker that she assumed that she was fired and left the worksite. Claimant received her final paycheck during the first week of July, consistent with the employer’s normal payday.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

The parties dispute the nature of the work separation. If an 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).

Claimant testified she believed she had been fired because she thought the employer had printed her final paycheck prior to her arrival at work on June 27, 2022, and had removed her access to the computer systems. Transcript at 22. Claimant later testified that her check was not sent until the following Thursday, and was received the first week of July. Transcript at 19. She said that the normal pay periods were the fifth and either fifteenth or twentieth of each month. Transcript at 19. Claimant never presented evidence as to the actual date printed on the paycheck or paystub, and the timeframe of its mailing and receipt leaves open the possibility that the check had not been printed on June 27, 2022, but was part of the normal payroll of July 5, 2022.

Even if the employer had printed the check on the morning of June 27, 2022, with intentions of discharging claimant, the employer never communicated to claimant such an intent. After hearing claimant’s explanation for her apparent misuse of the payroll software for personal gain, the employer decided to impose no discipline. It is quite possible the employer intended to discharge claimant over the incident but changed their mind after hearing claimant’s explanation. Immediately removing claimant’s access to the software was a rational response to the incident, whether or not claimant’s employment continued. These acts did not constitute the employer disallowing claimant the ability to continue working.

During a meeting in which management was discussing claimant’s future employment, claimant left the worksite before any decision was made. She was assigned to work at the front desk during the meeting,

and could have continued to do so at least through the conclusion of the meeting. Therefore, because claimant could have worked for the employer for an additional time, the work separation was a voluntary leaving.

The order under review found that claimant was discharged when the employer notified her that her bookkeeping position was being eliminated. Order No. 22-UI-203915 at 1. However, the order failed to consider that claimant was hired as a front desk receptionist just four months prior to the separation, and when the bookkeeping assignment ended, the employer requested that she resume the duties for which she had been hired, at least temporarily. The employer merely requested that she perform this work for a few hours on June 27, 2022, while they determined if there was other work which claimant might find more to her liking. Claimant voluntarily quit the employment by walking out before this determination was made.

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 left the employment because she erroneously believed she had been fired. She based this on a notification that a paystub had been issued in advance of the normal payday, and that her access to the employer’s software had been revoked. Without additional context, these events may have reasonably caused an employee to wonder whether they were in imminent danger of being discharged. However, in the context of the employer discovering what appeared to be the employee’s attempt at misappropriation, then accepting her explanation for this and offering her two alternate positions within the company, and knowing that the employer was conducting a meeting to potentially offer her different opportunities, no reasonable and prudent employee would believe that she had been, or was about to be, discharged. This unfounded belief was not a reason of sufficient gravity to justify leaving the work.

However, the elimination of claimant’s bookkeeping position may have been of sufficient gravity to quit, if she had no reasonable alternative but to leave work. After being told of the elimination, claimant was offered a position doing light maintenance which she claimed to be unable to perform “long-term” due to nerve damage in her right shoulder. Transcript at 17. Given the dissimilarity of this work and its physical requirements to the work claimant had done for the employer, this was not a reasonable alternative. Claimant was also offered a position as a front desk receptionist, which she declined due to “social anxiety and anxiety disorders that made it really hard for [her] to be in that area with the overstimulation of . . . all the children being really loud and rambunctious with the parents coming in and out.” Transcript at 17-18. This claim cannot be reconciled with the fact that claimant applied for and accepted this very position just four months prior to her separation, and worked in it for one to two of those months. Transcript at 12. It is also at odds with claimant’s recent application for the “family coach” position, which she described as “more of a social work position” that involved “working with families one on one.” Transcript at 18. Claimant presented no evidence of treatment for these disorders,

nor restrictions from medical providers that would have precluded her return to this work. Claimant has failed to prove that this was not a reasonable alternative to leaving. Additionally, the employer's managers were meeting to discuss additional positions which claimant may have found suitable. Claimant left before the employer could present her with these options. In so doing, claimant rejected a reasonable alternative to leaving.

Therefore, claimant voluntarily left work without good cause. She is disqualified from benefits beginning June 26, 2022.

**DECISION:** Order No. 22-UI-203915 is set aside, as outlined above.

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

**DATE of Service:** December 16, 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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