

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1060**

*Reversed*  
*No 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 5, 2022 (decision # 150421). Claimant filed a timely request for hearing. On September 21, 2022, ALJ Sachet-Rung conducted a hearing, and on September 30, 2022 issued Order No. 22-UI-203930, affirming decision # 150421. On October 19, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not sufficiently declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). His declaration stated that service was made only to the web address of the Department, but not to the employer. The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Rock Gate Capital LLC employed claimant as a branch manager in charge of admissions and recruiting for a trucking school from August 24, 2020 until June 9, 2022.

(2) Claimant's job was to recruit students to the employer's trucking school. The students received wages or other financial support from trucking companies or public service agencies while attending school, pursuant to agreements with these entities. Claimant's responsibilities included coordinating enrollment with the paying entities.

(3) The employer directed claimant and other employees to make certain representations to prospective students and paying entities so that they would enroll in the employer's school. These representations included that there were openings for newly enrolled students to begin class every Monday; that class sizes would be limited to a four-to-one student-to-instructor ratio; and, that the course of study could be completed in four weeks.

(4) In actuality, the classes were typically over capacity and could not admit new students when promised. The student-to-teacher ratio regularly exceeded four-to-one, and in at least one instance exceeded fifteen-to-one, sometimes causing classes to be cancelled. Due to chronic over-enrollment, students were often unable to complete the course within four weeks.

(5) Claimant fielded numerous complaints from students and paying entities about the employer's practices. He brought these complaints to the employer's attention through his supervisor, other managers, and the human resources department. The employer continued to direct claimant and other employees to make false representations to prospective students, particularly to represent that classes had openings in which they could immediately enroll when no such openings existed.

(6) Claimant had been employed in the truck driving education field for approximately 27 years and had developed important business relationships with instructors and paying entities in the area. These relationships and claimant's professional reputation in the industry were endangered by his association with the employer and their business practices. Claimant desired to continue working in this field at the time of his work separation.

(7) In late May 2022, claimant notified the employer that he intended to quit in approximately two weeks because he felt the employer's demands that he make false representations to prospective students and paying entities were unethical.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010).

The order under review concluded that claimant voluntarily quit without good cause and was therefore disqualified from receiving benefits, reasoning that while claimant was sincere in his beliefs that the employer's directives were unethical and quit for that reason, the situation was not sufficiently grave to justify quitting because claimant had the reasonable alternatives of requesting leave or transferring to a new position. Order No. 22-UI-203930 at 5. The record does not support this conclusion.

Claimant testified that he quit due to his belief that the employer's business practices were unethical. Transcript at 4. However, the employer's witness testified that claimant's manager reported that claimant quit because the job was "too hard on [him]" and that he was looking for "lighter work." Transcript at 28. The employer's witness admitted she did not have firsthand knowledge regarding claimant's resignation. Transcript at 21. The witness did not represent that she had ever seen claimant's resignation letter. Claimant's firsthand account of the reason he gave for quitting is entitled to greater weight, and more likely than not, he quit because he believed the employer's business practices to be unethical.

Claimant specifically alleged that he and other employees were directed by the employer to make statements in sales pitches to prospective students and paying entities with regard to whether there were immediate openings for enrollment in classes and the student-to-teacher ratio of the classes, which the employer and employees knew to be false. Transcript at 5-6. The employer did not rebut these allegations. Instructors and paying entities with whom claimant had built important business relationships over his 27 years in this field were discovering these false representations and making complaints, which strained these relationships and presumably threatened claimant's ability to continue working in this field. Transcript at 5-6, 33-34. Therefore, claimant's circumstances were grave.

The employer contended that they were unaware of claimant's allegations and had no opportunity to address them. Transcript at 39. However, claimant testified that he complained to at least five people who were members of management or the employer's human resources department. Transcript at 36-37. As claimant was a party to these conversations, his testimony regarding their contents is entitled to more weight than the employer's testimony that they merely had no record of claimant's complaints. Transcript at 21.

The employer also suggested that claimant could have taken a leave of absence or sought a transfer to a different position as reasonable alternatives to quitting. Transcript at 22. However, the record does not show that a leave of absence would have done anything to resolve claimant's concerns or been anything but futile. Similarly, claimant alleged that the employer's directives to make false representations involved employees in different positions throughout the company, and the employer did not show that a transfer to a different position within the school would have shielded claimant from participation in or association with this practice. Transcript at 15. These were therefore not reasonable alternatives to leaving. Accordingly, claimant voluntarily quit work for a reason of such gravity that he had no reasonable alternative but to leave work.

For the above reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 22-UI-203930 is set aside, as outlined above.

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

**DATE of Service:** December 28, 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.

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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**  
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