

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1102**

*Modified*  
*Request to Reopen Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 15, 2021, 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 March 15, 2020 (decision # 82751). Claimant filed a timely request for hearing. On September 1, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 13, 2022. On September 13, 2022, claimant failed to appear at the hearing, and on September 14, 2022 filed a request to reopen the hearing. On September 15, 2022, ALJ Clemons issued Order No. 22-UI-202751, dismissing claimant's request for hearing due to his failure to appear. On October 11, 2022, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on October 19, 2022 issued Order No. 22-UI-205471, allowing claimant's request to reopen the September 13, 2022 hearing and affirming decision # 82751.<sup>1</sup> On November 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen the September 13, 2022 hearing is **adopted**. The remainder of this decision addresses whether claimant quit working for the employer without good cause.

**FINDINGS OF FACT:** (1) Spark Team Associates, LLC employed claimant from mid-November 2019 until March 18, 2020, most recently as a co-manager at one of their restaurants.

(2) Claimant suffered from chronic lung conditions including chronic bronchitis. As a result, claimant was more susceptible to respiratory illnesses than a person without such conditions and could, for example, develop pneumonia or a bronchial infection from a common cold.

<sup>1</sup> On October 18, 2022, OAH mistakenly issued Order No. 22-UI-205309, which was substantially a duplicate of Order No. 22-UI-202751 (that had dismissed claimant's request for hearing on September 15, 2022). On October 19, 2022, OAH mailed a letter stating that Order No. 22-UI-205309 was vacated as it was issued in error.

(3) In or around March 2020, claimant became aware of the COVID-19 pandemic and subsequently grew concerned about his risk of exposure to the virus at work, particularly in light of his medical conditions and the governor’s executive order issued around that time. Claimant subsequently shared these concerns with his co-manager (who had hired him), who agreed that claimant should “go ahead, go home, be safe, [and] come back to us with all intention of rehire... when things clear up.” Audio Record at 33:28. On or around March 18, 2020, claimant also sent a text message to the employer’s district manager stating, in relevant part:

If this week gets much worse with cases in the surrounding areas I’m going into self quarantine. Without any sort of hazard pay to incentivise us into working in dangerous conditions, I will not be risking my life to serve burgers.  
This pandemic is chaos currently and I’ve gotta do what’s best for my livelihood right now. Sorry about it all my friend.

Exhibit 2 at 2.

(4) Following the discussions with his co-manager and the district manager, claimant understood himself to be taking a leave of absence from work, and intended to return to work for the employer eventually. Claimant entered self-quarantine in order to avoid contracting COVID-19.

(5) Prior to leaving work, claimant had not been advised by a medical professional to self-quarantine, as he did not have health insurance at the time and therefore did not have a primary-care physician to consult. Claimant did not have COVID-19 at the time he left work, nor was he subject to a mandatory quarantine.

**CONCLUSIONS AND REASONS:** Claimant quit work with good cause.

**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). An individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

At hearing, claimant described his departure from the employer as having “step[ped] away with the intention of coming back to work” for the employer after the COVID-19 pandemic resolved, and also stated that he “voluntarily took a leave of absence due to medical conditions.” Audio Record at 31:27. Despite this assertion, the record shows that claimant did not take a leave of absence, but instead quit. For claimant to have taken a leave of absence—which would have preserved the employment relationship, rather than severing it—the record would need to show that the employer approved of claimant’s temporary absence and held his job for him in the interim. The record does not show that the employment relationship was preserved. Instead, claimant’s co-manager’s suggestion that they intended to “rehire” him after the pandemic resolved indicates that claimant’s departure constituted a severance of the employment relationship. Otherwise, the employer would not have had to “rehire” claimant, as he

would have remained an employee. The employment relationship therefore was severed when claimant left work to enter self-quarantine.

Further, the record does not show that the employer was unwilling to allow claimant to continue working for them for an additional period of time. Rather, claimant determined that he would not continue working for the employer due to his concerns about contracting COVID-19 at work. As such, claimant voluntarily left work.

**Voluntary Leaving.** ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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). Claimant had chronic bronchitis, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. *Former* OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under *former* OAR 471-030-0070(1), a COVID-19 related situation includes the following:

\* \* \*

(c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;

\* \* \*

The order under review concluded that claimant quit work because of the “employer’s failure to offer an additional monetary incentive to compensate for working in what claimant described as ‘dangerous conditions[.]’” Order No. 22-UI-205471 at 5. However, the record does not show that claimant quit for this reason. The record instead shows that claimant quit working for the employer because, after the start of the COVID-19 pandemic, he became concerned about contracting the virus at work and the possibility of complications due to his pre-existing lung conditions.

To be clear, claimant did tell the employer that he was unwilling to continue working for them during the pandemic without “hazard pay.” However, claimant did not pose this to the employer as an ultimatum, such that his continued employment depended upon the employer agreeing to pay him a higher rate, and the record contains no indication that claimant had attempted to secure “hazard pay” from the employer prior quitting. Instead, claimant made the statement as part of his resignation. Had

claimant made his willingness to continue working for the employer contingent upon them paying him hazard pay, it stands to reason that he would have held such a discussion with the employer before leaving. That he did not do so suggests that the lack of hazard pay was not the reason he quit.

Furthermore, claimant testified at hearing that he did not have a particular rate of pay in mind when he made this statement to the employer, and that it “wasn’t really... what [he] wanted,” but that he felt that the job was not important or well-paying enough for him to “put [himself] in a life-threatening situation.” Audio Record at 39:21 to 40:20. The totality of the evidence—this testimony, claimant’s expressed concerns about his susceptibility to complications from COVID-19, and the fact that he did not attempt to convince the employer to pay him hazard pay before quitting—shows that claimant likely quit work due to his health concerns, and not because the employer did not offer him hazard pay.

Claimant quit work with good cause. First, claimant may have quit due to a “COVID-19 related situation,” as that term was defined by *former* OAR 471-030-0070(1)(c). Claimant was not directly advised by a medical professional that he should self-quarantine due to possible risk of exposure to COVID-19. However, the fact that his decision to quit was informed by the governor’s executive stay-at-home orders around that time suggests that he was also acting under the advice of public health officials who advised self-quarantine to avoid the risk of exposure to COVID-19. To the extent that claimant quit because he was acting under such advice, he quit with good cause.

Even if claimant’s reason for quitting did not constitute a “COVID-19 related situation” under *former* OAR 471-030-0070(1), however, his concerns about his underlying medical conditions and heightened susceptibility to complications from COVID-19 constituted a grave reason for quitting. The record shows that claimant’s chronic bronchitis could have led claimant to develop serious secondary conditions, such as pneumonia, were he to have contracted COVID-19 at work. As such conditions could have caused serious illness or death, claimant quit for a grave reason. Further, the record does not indicate that claimant had any reasonable alternative but to quit. For example, the record does not show that claimant could have worked from home or transferred to a position that would not put him in contact with members of the public.

Because claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit, claimant quit for good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-205471 is modified, as outlined above.

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

**DATE of Service:** January 9, 2023

**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 الاستئناف 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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