

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1106**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 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 August 28, 2022 (decision # 84347). Claimant filed a timely request for hearing. On October 26, 2022, ALJ Ainardi conducted a hearing, and on November 1, 2022 issued Order No. 22-UI-206358, affirming decision # 84347. On November 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). 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 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Norcal Power Solutions Inc. employed claimant from November 1, 2019 until September 3, 2022. Claimant worked out of the employer's Clackamas office.

(2) In February 2022, claimant requested that he be allowed to work remotely. The employer denied claimant's request, stating that claimant's position was not a remote position.

(3) In March 7, 2022, another employee was late to work. Claimant told this employee "he needed to make more of an effort to come in on time." Transcript at 22. This employee responded by loudly stating that he "was entitled to come in when he feels like it," and told claimant, "why don't you just retire?" Transcript at 23.

(4) Around May 2022, claimant made a second request to work remotely. The employer again denied this request, stating that claimant's position was not a remote position.

(5) In July 2022, claimant made a third request to work remotely. The employer again denied this request, stating that claimant's position was not a remote position.

(6) On August 3, 2022, claimant made a fourth request to work remotely. The employer allowed claimant to work remotely temporarily while he was taking care of a sick family member. This arrangement was scheduled to last until August 30, 2022, after which claimant would be required to report to the office.

(7) On August 30, 2022, claimant posted an "out of office" message on his email before the end of his shift. The co-owner was unaware that claimant's manager approved claimant to have time off on this day. The co-owner sent claimant an email asking who approved the time off, and stating that claimant was being written up for taking unapproved time off. This email also stated that claimant's remote work was over and that he would need to return all company property to the office. Claimant responded, "Does this mean you're terminating my employment." Transcript at 42. The co-owner did not respond to this message. Claimant's next scheduled shift, the day he was required to return to the office, was September 6, 2022.

(8) On September 3, 2022, claimant sent an email to the employer's co-owner asking whether he would be discharged if he refused to return to the office. Claimant stated that he could not return to work in the office because of issues with his manager and the employee from the March 2022 incident. Claimant stated that this employee bullied other employees, showed up late and wasted company time by unnecessarily socializing, and that this employee and his manager would "carry on like a couple of teenagers." Transcript at 47. These two employees were required to meet every morning and afternoon. Claimant further stated that his manager micromanaged him, revealed personal information about other employees, and referred to managing coworkers and customers as "herding cats." Transcript at 47. Claimant stated that he would not return to the office, but could continue to work from home.

(9) On September 5, 2022, the co-owner responded to claimant's message, stating "as we have discussed previously your position is not a remote position. Because of this I'm accepting your email below as your resignation." Transcript at 48.

**CONCLUSIONS AND REASONS:** Claimant quit without 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). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The work separation was a voluntary leaving that occurred on September 3, 2022. The record shows that the employer required claimant to resume working from the employer's office in Clackamas beginning on September 6, 2022. When claimant sent an email to the employer on September 3, 2022 stating that he would not return to the office, the employer interpreted this as his resignation. The record shows that

on September 3, 2022, the employer had continuing work available to claimant, but he refused to report to the Clackamas office as his position required.

Although claimant's September 3, 2022 email proposed that he continue to work remotely, the record is clear that claimant understood his position required him to report to the Clackamas office, and that he was unwilling to do so. Throughout 2022, claimant made repeated requests to work remotely. In response to these requests, the employer consistently told claimant that they could not offer remote work and that claimant's position required him to report to the Clackamas office. Though claimant was allowed to work remotely for the month of August 2022, this was specifically to allow claimant to care for a sick family member. Further, the employer was clear at the outset of this period that they expected claimant to report to the Clackamas office in September 2022. Because claimant knew the employer's position on remote work, his communication to the employer that he would not return to the office as required effectively severed the employment relationship. Claimant therefore voluntarily left work.

**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.

Claimant voluntarily left work on September 3, 2022, when he refused to return to in-person work at the Clackamas office because he believed it to be a "toxic and hostile work environment." Transcript at 17. However, the circumstances that claimant described in his testimony and email were not such so grave that a reasonable and prudent person would have left work at that time.

Claimant's September 3, 2022 email outlined multiple issues with his manager and another employee to justify claimant's refusal to return to in-person work. Claimant characterized the office environment to be "toxic" and "hostile." Transcript at 17. Claimant's email and testimony describe his manager and another employee as socializing unnecessarily and being inappropriately close. Further, he believed his manager micromanaged him and referred to managing employees as "herding cats." Transcript at 47. The instances described by claimant, demonstrate at most that the manager and other employer were inefficient and unprofessional. Inefficiency and unprofessionalism can certainly create a difficult work environment, but it does not follow that no reasonable and prudent person would have continued to work there.

Further, the employer testified that the interactions between the manager and another employee were not unnecessary as the manager and other employee were required to meet every morning and afternoon. Transcript at 50-51. Nor has claimant shown how the interaction between the manager and other employee directly impeded his ability to work at the office. The only incident that claimant described which directly involved him occurred on March 7, 2022. On this date, claimant told another employee that they needed to come in to work on time and this employee responded by saying he should be allowed to come in late and told claimant, "why don't you just retire?" Transcript at 23. While this

employee's remark was inappropriate, the record does not contain evidence that there were any further altercations with this employee. Claimant did say that this employee bullied other individuals, but did not present evidence of such instances or describe how this created a grave situation for him. Additionally, claimant continued to work for the employer for over 5 months after his altercation with this employee, and has not shown that this incident was sufficiently grave that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant quit working for the employer on September 3, 2022 without good cause, and therefore is disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 22-UI-206358 is affirmed.

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

**DATE of Service:** January 6, 2023

**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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