

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1125**

*Late Request for Hearing Allowed*  
*Request to Reopen Hearing Allowed*  
*Affirmed - Disqualification*

**PROCEDURAL HISTORY:** On April 29, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and that claimant was not disqualified from receiving benefits based on the work separation (decision # 155911). On May 19, 2022, decision # 155911 became final without the employer having filed a request for hearing. On May 23, 2022, the employer filed a late request for hearing. On August 31, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 14, 2022. On September 14, 2022, the employer failed to appear for the hearing, and on September 15, 2022, ALJ Frank issued Amended Order No. 22-UI-202730,<sup>1</sup> dismissing the employer's request for hearing for failure to appear. On September 15, 2022, the employer filed a timely request to reopen the September 14, 2022 hearing. On October 12 and 25, 2022, ALJ Griffin conducted a hearing, and on October 26, 2022 issued Order No. 22-UI-205889, allowing the employer's late request for hearing and request to reopen the September 14, 2022 hearing, and reversing decision # 155911 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective June 12, 2021.<sup>2</sup> On November 9, 2022, claimant filed an application for review of Order No. 22-UI-205889 with the Employment Appeals Board (EAB).

<sup>1</sup> Amended Order No. 22-UI-202730 amended an order ALJ Frank issued on September 14, 2022, Order No. 22-UI-202699. The amendment was to update the employer's address on the certificate of mailing of Amended Order No. 22-UI-202730.

<sup>2</sup> As disqualifications from receiving benefits are effective on the Sunday of the week in which a work separation occurs, the effective date of disqualification was June 13, 2021. Therefore, Order No. 22-UI-205889's reference to June 12, 2021 is presumed to be a typographical error.

**WRITTEN ARGUMENT:** EAB considered claimant’s written argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portions of the order under review allowing the employer’s late request for hearing and allowing the employer’s request to reopen the September 14, 2022 hearing are **adopted**. The remainder of this decision relates to claimant’s work separation.

**FINDINGS OF FACT:** (1) United Shippers Inc. employed claimant as a truck driver from October 26, 2020 to June 18, 2021.

(2) Claimant accepted the job with the understanding he would receive an unspecified raise after approximately six months of employment. Claimant requested a raise in May 2021.

(3) On May 20, 2021, the employer told claimant by text that they would not raise his pay to \$30.00 per hour. They did not offer an alternative raise. In the same text, the employer asked claimant, “If you decide to leave please let me know when your last day will be.” Exhibit 6. Claimant replied, “I’ll work until June 18th.” Exhibit 6.

(4) In May 2021, the employer was expanding their business by adding additional trucks and truckers. The employer was not downsizing and did not intend to lay off or otherwise discharge claimant at any time.

(5) Claimant continued working until June 18, 2021, then did not work for the employer again.

**CONCLUSIONS AND REASONS:** Claimant quit work 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).

Claimant testified that the employer discharged him either because they were downsizing or because he had asked for a raise. October 12, 2022 Transcript at 19-21. However, claimant did not specify when the employer intended the discharge to become effective. Instead, claimant contends he asked to continue working “for a couple more weeks” or “maybe [a] month” because he had to take care of his family. October 12, 2022 Transcript at 20. He said that he and the employer’s operations manager agreed on a last day of June 18, 2021, and the operations manager asked claimant to text him that. October 12, 2022 Transcript at 21-22.

In contrast, the operations manager maintained that neither he, nor anyone else at the company, told claimant he would be discharged. October 12, 2022 Transcript at 23-24. He testified that when he refused claimant’s request for a raise, claimant quit by telling him that his last day was going to be June

18, 2021. October 12, 2022 Transcript at 17. The operations manager stated that the company was expanding and hiring additional drivers at that time, not downsizing. October 12, 2022 Transcript at 25.

The operations manager's account of the separation is more consistent with the evidence as a whole. His assertion that the company was in need of additional drivers as they expanded was not rebutted by claimant, and supports his testimony that there was no need to lay claimant off. The text message that notified claimant that his request for a raise was denied also asked, "*If you decide to leave please let me know what your last day will be.*" Exhibit 6 (emphasis added). This phrasing also supports the operations manager's testimony that the separation was a decision made by claimant, not the employer. More likely than not, claimant severed the employment relationship due to dissatisfaction over not receiving the raise he requested. Even if claimant believed that he would be discharged at some future date to be agreed upon, claimant's failure to work until he was no longer allowed to do so by the employer is still considered a voluntary leaving given that claimant could have continued working for the employer for an additional period of time. See *Smith v. Employment Division*, 34 Or App 623, 579 P2d 310 (1978) ("where the employer and the employee have 'agreed upon a mutually acceptable date on which employment would terminate,' the termination should be treated as a 'voluntary leaving' and not as a discharge"); see also *J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). For these reasons, the work separation was a voluntary leaving that occurred on June 18, 2021.

**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). "[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 contended that he had good cause for leaving work because the employer's denial of claimant's raise request constituted a "wage dispute" and an unspecified "violation of Oregon law." Written Argument at 5-6. The record does not show evidence of a contract between the parties that made the relationship anything other than at-will employment. Nor does the record show that any provision of Oregon law required the employer to provide claimant a raise at any point in time. Even if the employer promised claimant a raise after six months at the time they hired claimant, this would not have changed the at-will nature of the employment. As far as the record shows, the employer remained free to alter the terms of employment, including wages, at any time, just as claimant was free to reject such alterations by leaving the employment at any time. Claimant did not establish that the employer's decision not to raise claimant's wage, even if they had previously promised to do so to induce claimant to work for them, violated any law.

Similarly, the employer's refusal of claimant's request for a raise did not constitute a "wage dispute." The wage disputes cited by claimant in which EAB found good cause for leaving work all involved situations where the employer was withholding pay the employee had already earned or was otherwise entitled to under law, and such withholding was expected to continue had the employee not quit. Written

Argument at 5. In circumstances such as those, voluntarily leaving work is justified. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI). Here, in contrast, claimant worked at the wage agreed upon with the employer since the time of hire and the record does not show that the employer failed to pay claimant all wages earned. The record also does not show that the employer reduced claimant's pay during his employment. Therefore, more likely than not, claimant quit because of mere dissatisfaction with his pay, not due to an ongoing unfair labor practice.

The employer's witness testified that if claimant's wage increased to \$30.00 per hour, it would have constituted a twelve percent raise. October 12, 2022 Transcript at 17. This means claimant was earning approximately \$26.75 per hour. Claimant has not proven that his dissatisfaction with this wage was a reason of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time. In fact, after learning his raise request was denied, claimant continued to work for the employer at his existing wage for nearly a month. Accordingly, claimant has not shown good cause for voluntarily leaving work.

Therefore, claimant voluntarily left work without good cause. He is disqualified from receiving benefits effective June 13, 2021.

**DECISION:** Order No. 22-UI-205889 is affirmed.

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

**DATE of Service:** January 13, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.