

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1130**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 15, 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 unemployment insurance benefits effective August 21, 2022 (decision # 110606). Claimant filed a timely request for hearing. On October 25, 2022, ALJ Janzen conducted a hearing, and on October 26, 2022 issued Order No. 22-UI-205897, affirming decision # 110606. On November 14, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument to the extent it was based on the record at hearing.

**FINDINGS OF FACT:** (1) Rocky Mountain Construction LLC employed claimant in their asphalt plant from April 2017 until August 27, 2022.

(2) For safety reasons, two employees are generally required to operate the asphalt plant at any time so that one employee can operate emergency shut-off controls, among other duties.

(3) For the last two months of claimant's employment, claimant was required to operate the asphalt plant alone without anyone operating the emergency controls, which caused him to work in unsafe conditions. He was also required to repair high-voltage electrical components despite not being properly trained or qualified to do so.

(4) The employer was aware that claimant was working in unsafe conditions by requiring him to work alone, but would not hire or assign an additional employee to work at the plant for financial reasons.

(5) On August 16, 2022, claimant requested a raise from \$29.00 to \$35.00 per hour from the employer because he felt he was doing the work of two employees and working in unsafe conditions. The

employer did not immediately make a decision on claimant's request. Claimant would have continued working despite his safety concerns if granted the raise.

(6) On August 25, 2022, the employer told claimant in response to his request for a raise that they "can't afford to do anything." Audio Record at 13:56 to 14:22. The employer asked claimant to wait "a couple more months," when another employee would return to work with claimant at the plant. Audio Record at 15:07 to 15:26. Claimant told the employer he was resigning, effective August 27, 2022.

(7) On August 27, 2022, claimant stopped working for the employer.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without 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). 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.

The employer's decision to require claimant to work alone in the asphalt plant for financial reasons created unsafe working conditions for claimant. Claimant performed duties such as repairing dangerous electrical equipment, which he was not qualified to do, and worked daily without a second employee who could operate safety controls in the event of an emergency. Had claimant quit for this reason after exercising all reasonable alternatives to remedy the situation, he likely would have left work with good cause. However, instead of insisting that the employer arrange for another employee to work with him to alleviate the unsafe conditions, claimant requested a raise of six dollars per hour to continue working in those unsafe conditions.

Claimant argued that his request for a raise was intended to be "irony," by which claimant apparently meant that he was not serious about wanting the raise, and brought it up only as an attempt to remedy the safety issue of claimant working alone. Claimant's Written Argument at 2. He testified that it was "totally ridiculous" to expect a raise but that making such a request would prompt the employer to "send somebody out to help [him]." Audio Record at 16:06 to 16:34. However, the record contains no satisfactory explanation of how claimant's demand of a raise of six dollars per hour to continue working alone would have done anything to convince the employer to hire or reassign another employee making far more than six dollars per hour to work with claimant.

The record also fails to show that if claimant were offered the requested raise to continue working alone, he would have rejected the raise and quit nonetheless because of the unsafe conditions. Although claimant contended that he quit only because of unsafe working conditions and not because he was denied a raise, the record shows, more likely than not, that claimant quit because he was denied a raise he felt would compensate for doing the work of two people, and not because he unconditionally refused

to work for an additional period of time under unsafe conditions. The analysis of whether claimant had good cause for leaving must therefore focus on the denial of his request for a raise.

Claimant earned \$29.00 per hour. He has not proven that the employer's failure to increase his wage by six dollars per hour, even in light of the extra work he was doing, 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. 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 August 21, 2022.

**DECISION:** Order No. 22-UI-205897 is affirmed.

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

**DATE of Service:** January 18, 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**

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**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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