

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1147**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 4, 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 July 10, 2022 (decision # 85722). Claimant filed a timely request for hearing. On November 1, 2022, ALJ Passmore conducted a hearing, and on November 2, 2022 issued Order No. 22-UI-206475, affirming decision # 85722. On November 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) BCS Bar & Grill employed claimant as a bartender from February 25, 2017 until July 13, 2022.

(2) On July 13, 2022, claimant was scheduled to work at 7:00 a.m. At 6:22 a.m. claimant texted the employer's owner that she "might be a little late" because she had just woken up. Transcript at 26. At 6:42 a.m. claimant called the employer's owner to notify him that she was on her way to work. Claimant believed that the owner spoke to her "in a harsh manner" when they spoke on the phone. Transcript at 14.

(3) On July 13, 2022, claimant arrived to work around 7:03 a.m. and requested the owner speak with her. Claimant told the owner that as a victim of domestic violence, she was particularly offended by the way that he spoke to her on the phone. She then told the owner that she no longer wanted to work for him and left the bar. Transcript at 27. Claimant never worked for the employer again.

(4) On July 13, 2022, at 7:35 a.m. the owner texted claimant "I hope you're happy with your decision...most people will have the decency to give their two weeks' notice." Transcript at 28.

(5) On July 17, 2022, at 9:01 a.m. the owner texted claimant "Can you please bring your keys to the business?" Transcript at 28. Claimant responded that she would but did not bring the keys. The owner then suggested coming to claimant's house to retrieve the keys. Claimant responded that she would drop

them off later in the day. When she did not drop them off, the owner texted her “It’s okay. You can throw that in the garbage. I’m having the locks changed.” Transcript at 29.

(6) On September 8, 2022, claimant texted the owner stating that she wanted to apologize and “I don’t know WTF happened that day.” Transcript at 36.

**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).

At hearing, the parties disagreed about the nature of the work separation. Both parties agreed that the work separation occurred following a meeting between claimant and the owner shortly after claimant arrived for work on July 13, 2022. According to claimant, she told the employer’s owner that she did not like the tone that he used with her on the phone, and the owner became upset and forced her out of the bar. Transcript at 17. The owner, on the other hand, testified that claimant told him that she did not want to work for him anymore because of the way he talked to her on the phone. Transcript at 27. While these are both plausible first-hand accounts of the final incident, the weight of the evidence supports the owner’s account.

First, the owner read a text message that he sent to claimant on July 13, 2022, immediately following their meeting, which stated “I hope you’re happy with your decision...most people will have the decency to give their two weeks’ notice.” Transcript at 27. This message indicates that the owner understood the separation to be a voluntary leaving as he referenced that being claimant’s decision and the typical notice period when an employee quits. The record shows that claimant did not respond to this text or otherwise express disagreement with the employer’s characterization.

Next, the owner provided a more consistent account of his attempt to retrieve the keys to the business following the separation. The owner read multiple text messages he sent to claimant on July 17, 2022 attempting to get her to return the keys. Transcript at 28. Claimant was less consistent in her account of returning the keys. She stated that the owner asked her to drop off the keys and that she dropped them off at the bar the July 14, 2022. Transcript at 22. However, she also testified that the owner did say she did not need to bring the keys back because he was going to change the locks, which is inconsistent with her claim that she dropped them off on July 14, 2022. Transcript at 38. The fact that the owner presented a more consistent account of this interaction lends further support to his account regarding the nature of the work separation.

Lastly, the owner read a text message from claimant to the owner on September 8, 2022, where claimant requested to meet with the owner to apologize for their final interaction and stated, “I don’t know WTF happened that day.” Transcript at 36. This message indicates that claimant felt a need to apologize for the work separation, which is a more consistent with claimant having quit rather than having been discharged, and lends further credibility to the employer’s account that claimant quit on July 13, 2022.

For these reasons, the record shows that claimant likely quit work on July 13, 2022 when she advised that she did not want to work for the employer anymore because of the way the owner talked to her on the phone that morning.

**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 did not establish that she faced a situation of such gravity that she had no reasonable alternative but to leave work. The record shows that claimant quit work on July, 13, 2022 because she was offended by the owner’s tone of voice when she called to inform him that she would be a few minutes late to her shift. Besides the offense of the owner’s tone, claimant did not show that she suffered any negative consequences from the owner’s conduct during their phone call. There is no indication that the owner used foul language, called claimant names, or threatened her with physical harm. Although the owner’s tone may have been harsh, claimant did not show that she suffered any adverse mental or physical health consequences because of the owner’s tone. Nor did claimant face any disciplinary action as a result of her lateness. Given that the record does not support that the owner was physically threatening or subjected claimant to abusive language, as well as the lack of effects on claimant or her employment, claimant did not show that a reasonable and prudent person of normal sensitivity would have left work when she did.

Additionally, claimant did not show that she was without reasonable alternatives to quitting. Because she quit immediately after informing the owner that she was offended, he had no opportunity to address claimant’s concerns about his tone. The owner could have adjusted his tone to be less harsh. Since claimant provided no opportunity for the employer to address the owner’s tone, she did not carry her burden to prove that she had no reasonable alternative but to quit when she did.

For the above reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective July 10, 2022.

**DECISION:** Order No. 22-UI-206475 is affirmed.

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

**DATE of Service:** January 20, 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.