

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1197**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 28, 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 July 31, 2022 (decision # 145429). Claimant filed a timely request for hearing. On November 14, 2022, ALJ Clemons conducted a hearing, and on November 21, 2022 issued Order No. 22-UI-207818, affirming decision # 145429. On December 2, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because his statement declaring that he provided a copy of his argument to the opposing party or parties was deficient. Claimant's description of the timing and method of service indicated claimant's declaration of service referred to communications that took place prior to hearing rather than to providing a copy of the written argument he submitted to EAB as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Green Home Construction employed claimant as a rain gutter installation foreman from February 17, 2020 until August 2, 2022.

(2) In July 2022, the employer did not have sufficient rain gutter business to continue to employ claimant full-time. Instead, claimant suggested and the employer agreed that claimant work Monday through Wednesday each week at an hourly wage, as opposed to receiving a salary when he worked full-time.

(3) On Monday, August 2, 2022, the employer had no additional rain gutter work for claimant to perform and did not have any prospect of such work in the near future. The employer told claimant that they would assign him different tasks at the same hourly wage and schedule, beginning with assignments to build part of a block wall and repair an awning. These tasks were expected to last up to two days, and the employer did not know what assignments, if any, would be available to claimant thereafter.

(4) Upon learning of the proposed assignments that day, claimant was unhappy with the unpredictability of being assigned work in this way and found the work itself undesirable. He quit the employment without attempting to perform the new assignments.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit without good cause.

**Nature of the work separation.** If an 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). 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).

Claimant contended that because the employer had no prospect of rain gutter work for him after August 2, 2022, the employer effectively discharged him for lack of work that day. Transcript at 5-6. However, the employer offered claimant up to two days of continuing work that week at the same wage he had been earning, which claimant declined to perform. Therefore, even though this additional work involved tasks to which claimant was not accustomed, claimant could have continued to work for the employer for an additional period of time for the same compensation. The August 2, 2022 work separation therefore was a voluntary leaving.

**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 testified he declined the new assignments because he “didn’t wanna do odds-and-ends jobs and [he] needed something more secure.” Transcript at 5. He clarified that he was “60 years old, so doing block walls was not something that was on [his] list of things [he] wanted to do. On one hand it wasn’t very enticing, and on the other hand it was only for one day.” Transcript at 14-15. However, claimant did not assert that he was incapable of performing this task due to his age or for any reason other than it not being “very enticing.” A reasonable and prudent person would not find this to be a reason of such gravity as to justify quitting. Similarly, claimant cited a lack of work stability. However, claimant had proposed the July 2022 reduction in his work hours due to a slowdown in rain gutter business that month. Thereafter, claimant had been working Monday through Wednesday each week, and the employer had offered him work for at least these three days the week of August 2, 2022. No further reduction in hours had been announced by the employer. The mere possibility that claimant’s hours could be reduced or eliminated the following week did not constitute a lack of stability such that a reasonable and prudent person would have concluded they had no reasonable alternative but to leave work at that time. Such a person would have instead waited to see if the employer actually reduced or eliminated their hours before coming to such a conclusion.

Because claimant has not shown that he faced a situation of such gravity that he had no reasonable alternative but to leave work, he voluntarily quit without good cause, and therefore is disqualified from receiving benefits effective July 31, 2022.

**DECISION:** Order No. 22-UI-207818 is affirmed.

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

**DATE of Service:** February 9, 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**  
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