

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1215**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 4, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 11, 2022 (decision # 185350). Claimant filed a timely request for hearing. On November 18, 2022, ALJ Taylor conducted a hearing, and on November 21, 2022 issued Order No. 22-UI-207894, affirming decision # 185350. On December 7, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Specifically, claimant submitted a letter dated October 11, 2022 that she originally sent with her request for hearing, but she had not sent a copy to the employer prior to the hearing and it was therefore not admitted into evidence at hearing. Claimant had the opportunity to testify to any matters contained within the letter to the extent they were relevant and material to the proximate cause of her separation from employment. Audio Record at 26:08 to 26:55. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

Claimant also asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Rob Tonkin Toyota employed claimant as a service cashier from August 29, 2022, until September 14, 2022.

(2) During claimant's training at the commencement of employment, claimant received customary rest and meal breaks without incident. Once claimant concluded training and began working independently,

claimant was responsible for finding another employee to fill in for her before taking breaks. Claimant missed some breaks when she was busy and neglected to request relief from a coworker. At times, there were delays before another employee could relieve claimant for her breaks after claimant made the request.

(3) Claimant had additional complaints about the work environment, including that she could not reach a metal gate that had to be closed at the end of her shift, but she did not raise the concerns with any manager or human resources.

(4) On September 13, 2022, claimant requested that a coworker relieve her while she took a restroom break, but there was a delay of a few minutes before the coworker was available. Claimant had to jog to the restroom because of the delay, which she felt was “kinda humiliating.” Audio Record at 7:30 to 8:38.

(5) On September 14, 2022, claimant texted her resignation prior to the start of her shift and did not return to work for the employer. Claimant would not have quit the employment that day but for the September 13, 2022 delay in receiving a break.

(6) Claimant did not complain to any manager or human resources officer about her displeasure with the break procedure or the work environment. She did not request a transfer to another department or location.

**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.

Claimant testified that if not for the delay in receiving the bathroom break on September 13, 2022, she would not have quit on September 14, 2022, but would have begun to seek other employment over her dissatisfaction with the work environment. Audio Record at 13:25 to 13:51. Because this incident caused claimant to leave work when she did, she must show that the incident constituted good cause. The employer provided claimant with the rest and meal breaks required by law, but directed that claimant arrange with her coworkers for coverage of those breaks before taking them, which occasionally delayed the breaks. The record does not suggest that the employer would have disciplined claimant if she took a short restroom break in an urgent situation while waiting for coverage. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have considered having to wait a few minutes after requesting a break to begin that break to be a situation of such gravity as to justify leaving work.

Even if this constituted a situation of sufficient gravity to justify quitting, claimant had reasonable alternatives. She did not consult her supervisor, human resources, or any other manager about her concerns. She did not request a transfer to another department or location where break procedures may have been different. The manager testified that he would have made modifications to the break procedures if he was aware of claimant's complaints, but he observed claimant on several occasions taking breaks to smoke without incident so he did not suspect there was any problem. Audio Record at 21:00 to 22:00. He also would have granted claimant a transfer if requested. Audio Record at 22:01 to 22:14. Claimant did not avail herself of any of these alternatives.

Because claimant has not shown that she faced a situation of such gravity that he had no reasonable alternative but to leave work, she voluntarily quit without good cause, and therefore is disqualified from receiving benefits effective September 11, 2022.

**DECISION:** Order No. 22-UI-207894 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**

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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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