

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0023**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 31, 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 September 18, 2022 (decision # 135133). Claimant filed a timely request for hearing. On December 8, 2022, ALJ Ainardi conducted a hearing, and on December 19, 2022 issued Order No. 22-UI-210244, affirming decision # 135133. On December 27, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's December 27, 2022 written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, claimant's January 24, 2023 argument was considered to the extent it was based on the hearing record. 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.

**FINDINGS OF FACT:** (1) Express Employment Professionals, a temporary staffing agency, employed claimant on assignment as a customer service representative from June 2022 until September 23, 2022.

(2) Claimant's normal work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday, with a half-hour lunch.

(3) In August and September 2022, the employer wanted to make claimant's employment permanent. Claimant was scheduled to resume attending college on September 26, 2022, and told the employer she could only continue in the employment on or after that date if she were granted a one-hour lunch break each day at 10:00 a.m. to attend a class. The employer's business needs did not allow for such a lunch break and her request was denied.

(4) On September 23, 2022, claimant voluntarily ended the temporary assignment because, without the adjustment to her lunch break, the work would have interfered with her ability to attend class when the school term began the following business day.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work 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) (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). In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship “shall be deemed severed at the time that a work assignment ends.” OAR 471-030-0038(1)(a).

Claimant contended that the decision to end her temporary assignment was “mutual.” Claimant’s January 24, 2023 Written Argument at 1. However, the employer wanted claimant to continue working beyond September 23, 2022, and even desired to make her employment permanent. While claimant wished to continue working for the employer under different terms, specifically a change to her lunch break, the employer could not accommodate that change. Thus, because working her next shift on September 26, 2022 would have interfered with her return to class that day, claimant was unwilling to continue working for the employer for an additional period of time on the terms offered by the employer. Therefore, the work separation was a voluntary leaving that occurred on September 23, 2022 when claimant ended the work assignment.

**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). Per OAR 471-030-0038(5)(b)(D), a claimant has left work without good cause by leaving work to attend school, unless required by law.

Claimant testified that part of her reason for quitting was the “possibility of relocating to Seattle” at some point in the future. Audio Record at 11:50 to 12:20. However, claimant remained in Portland attending school through at least the date of the hearing. Audio Record at 12:30 to 12:42. Claimant left work when she did, on September 23, 2022, because school was beginning on the next business day and would have conflicted with her work schedule had she continued working. It is therefore more likely than not that when claimant left work, she did so to attend school, and not due to an immediate need to relocate to Seattle. Claimant also argued that she did not quit “to attend school” because she had been enrolled in school for many years, but only needed to complete a specific class that conflicted with her work schedule in order to graduate. Claimant’s January 24, 2023 Written Argument at 1. However, OAR 471-030-0038(5)(b)(D) makes no distinction between quitting to enroll in a new program of full-time study, or quitting because attending a specific class interferes with an employee’s work schedule.

Claimant quit work when she did because she prioritized going to a class needed for graduation over remaining at her job, when only one or the other was possible. She therefore left work to attend school, and did so without good cause pursuant to OAR 471-030-0038(5)(b)(D).

To the extent claimant's decision to quit to attend school was a result of the employer's refusal to grant her an hour-long lunch break at 10:00 a.m. each day, claimant did not face a grave situation. The employer supplied claimant with a half-hour lunch break during her shifts without complaint until the conflict with her class schedule arose. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not have left work over the timing and length of a lunch break that met the minimum standards set by law. Accordingly, the employer's refusal to move claimant's lunch break to a different time and extend it beyond the minimum standard required by law did not constitute good cause to quit work.

For these reasons, claimant quit working for the employer without good cause and was therefore disqualified from receiving benefits effective September 18, 2022.

**DECISION:** Order No. 22-UI-210244 is affirmed.

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

**DATE of Service:** February 24, 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

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## 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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