

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0226**

*Affirmed*  
*Request to Reopen Allowed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits as a result of the work separation (decision # 132750). The employer filed a timely request for hearing. On September 14, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 28, 2021. On September 28, 2021, ALJ Scott conducted a hearing at which claimant failed to appear, and on September 29, 2021 issued Order No. 21-UI-175884, reversing decision # 132750 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving benefits effective July 5, 2020. On October 19, 2021, claimant filed a timely request to reopen the September 28, 2021 hearing. On February 3, 2023, ALJ Scott conducted a hearing, and on February 6, 2023 issued Order No. 23-UI-214952, allowing claimant's request to reopen the September 28, 2021 hearing and again reversing decision # 132750 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective July 5, 2020. On February 15, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Meister's Buy Rite, Inc. employed claimant as a front desk clerk at their motel from July 8, 2020 until July 10, 2020.

(2) The employer had in place COVID-19 mitigation policies consistent with governmental guidelines, including requiring masks in public areas and erecting a plastic barrier at the front desk to separate claimant from the motel's customers.

(3) During claimant's two days of employment, she observed a motel maid wearing a mask improperly and observed customers not wearing masks at times in the lobby. These observations, along with media reports of rising COVID-19 case counts in the county, caused claimant to fear for her safety. She was also fearful of the motel's customers, specifically because a customer inquired about the breakfast food that the motel ordinarily provided being discontinued due to COVID-19, "several young girls" were staying for "a mini beach week," and a woman "brought her schizophrenic son to stay in the hotel for a

couple of days . . . [a]nd he was wandering around without a mask and . . . with this mental illness, that was itself uncomfortable” to claimant. Transcript at 17-18.

(4) On July 10, 2020, claimant quit working for the employer due to her concerns over COVID-19 and the motel’s clientele.

(5) On September 14, 2021, OAH mailed notice of a hearing scheduled for September 28, 2021 to claimant’s address of record on file with OAH. Claimant received the notice prior to the hearing.

(6) On September 28, 2021, claimant was working as a nanny for a one-year-old. She brought the documents containing information on how to participate in the hearing to work with her with the intention of appearing at the hearing if she “had time.” Transcript at 5. Claimant was “swept up with work” and did not appear at the hearing or request a postponement. Transcript at 6. After returning home from work, claimant attempted to call OAH to explain why she missed the hearing, and ultimately filed a request to reopen the hearing on October 19, 2021.

**CONCLUSIONS AND REASONS:** Claimant had good cause to reopen the September 28, 2021 hearing. Claimant voluntarily quit work without good cause.

**Request to reopen.** ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” to reopen the hearing exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2).

Claimant was aware of the scheduled date and time for the hearing, and intended to appear if her work allowed. Due to the unpredictable nature of caring for a baby while working as a nanny, it is possible that claimant could have been able to take a break from work to participate in the hearing, as claimant had hoped. However, the record indicates that the need to attend to the baby at the scheduled hearing time prevented claimant from appearing or requesting a postponement. While the possibility that claimant would be prevented from participating in the hearing for this reason may have been predictable, the baby’s needs at the precise time of the hearing were not, and constituted a factor outside of claimant’s reasonable control. Accordingly, claimant has shown good cause to reopen the September 28, 2021 hearing.

**Voluntary quit.** 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.

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. *Former temporary* OAR 471-030-0070(2)(b) (effective March 8, 2020 through September 12, 2020) provides that an individual who quits work because of a COVID-19 related situation is not disqualified from receiving unemployment insurance benefits. Under *former temporary* OAR 471-030-0070(1), a COVID-19 related situation includes the following:

- (a) A person is unable to work because they are ill with the novel coronavirus;
- (b) A person is unable to work because they have been potentially exposed to the novel coronavirus and have been subjected to a mandatory quarantine period;
- (c) A person is unable to work because they have been advised by their health care provider or by advice issued by public health officials to self-quarantine due to possible risk of exposure to, or spread of, the novel coronavirus;
- (d) A person is unable to work because their employer has ceased or curtailed operations due to the novel coronavirus, including closures or curtailments based on the direction or advice of the Governor or of public health officials;
- (e) A person is unable to work because they have to stay home to care for a family member, or other person with whom they live or for whom they provide care, who is suffering from the novel coronavirus or subject to a mandatory quarantine;
- (f) A person is unable to work because they have to stay home to care for a child due to the closure of schools, child care providers, or similar facilities due to the novel coronavirus; and
- (g) A person is being asked to work when it would require them to act in violation of a mandatory quarantine or Governor's directive regarding the limitation of activities to limit the spread of the novel coronavirus.

Claimant voluntarily quit working for the employer over concerns regarding COVID-19 and the customers that patronized the motel. Claimant testified she told the employer she was quitting after two days of work because she did not feel safe due to rising COVID-19 case numbers in the county. Transcript at 23. At hearing, claimant stated that she quit not just because of this fear, but also due to fears concerning the motel's customers and their non-compliance with masking requirements. Transcript at 17-19. The employer's owner testified that the motel complied with governmental mandates regarding COVID-19 that were in place at the time, including requiring masks, and was unaware of any violations. Transcript at 19. Claimant stated that despite the mask requirement, she observed one motel maid wear her mask "over her mouth" and two other customers walk through the lobby without masks on. Transcript at 17, 29. Claimant did not assert that she asked either the maid or the customers to comply with the mask requirement while in the lobby, which presumably would have been claimant's responsibility as the front desk clerk. Claimant, although 65 years old, denied having any medical conditions which would have specifically been impacted by COVID-19. Transcript at 18-19. Thus, claimant demonstrated only a general fear of acquiring COVID-19 that would have been applicable to

any public place. Transcript at 18. Accordingly, these concerns did not constitute a “COVID-19 related situation” as defined in *former temporary* OAR 471-030-0070(1).

As claimant faced no substantial additional risk of exposure to COVID-19 in her employment beyond what she likely would have encountered elsewhere in her everyday life, and she did not assert that she was advised by a medical professional to take extraordinary precautions against COVID-19, claimant did not face a grave situation such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Further, even if claimant had faced a grave situation regarding her COVID-19 fears, reasonable alternatives to quitting were available. Claimant implied she did not express her complaints regarding masking to the employer because she could not have “comfortably” discussed the matter with people who were “allowing a situation to go on[.]” Transcript at 24. However, the owner testified that had he been aware of claimant’s observations regarding non-compliance with mask requirements, her concerns would have been promptly addressed, including potentially discharging any motel employee who refused to comply. Transcript at 30. Accordingly, claimant could have raised her concern over this issue with the employer as a reasonable alternative to quitting, but failed to do so.

Additionally, claimant quit over specific concerns regarding the customers she encountered. Claimant described the customers as “strange characters wandering around,” which caused her “fears and reservations.” Transcript at 19. However, the customers’ conduct, as described by claimant, amounted to little more than them walking into the lobby or inquiring about the motel’s services. Claimant did not demonstrate how the purpose of the customers’ stays at the motel, or their mental health conditions, directly affected claimant or her ability to perform her job. Therefore, claimant has not proven by a preponderance of evidence that the presence of these customers constituted a grave situation such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Because claimant did not face a grave situation or a “COVID-19 related situation” and had reasonable alternatives to quitting, claimant did not show good cause to quit work.

For these reasons, claimant’s request to reopen the September 28, 2021 hearing is allowed. Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective July 5, 2020.

**DECISION:** Order No. 23-UI-214952 is affirmed.

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

**DATE of Service:** April 5, 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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