

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0338**

*Late Request for Hearing Allowed*  
*Reversed ~ No Disqualification*

**PROCEDURAL HISTORY:** On February 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective September 13, 2020 (decision # 141637). On March 10, 2021, decision # 141637 became final without claimant having filed a request for hearing. On April 14, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 15, 2022 issued Order No. 22-UI-200522, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 29, 2022. On August 29, 2022, claimant filed a timely response to the appellant questionnaire. On February 7, 2023, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 22-UI-200522 was cancelled and that a hearing would be scheduled to determine if claimant had good cause to file the late request for hearing and, if so, the merits of decision # 141637.

On March 1, 2023, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on March 13, 2023 issued Order No. 23-UI-218892, allowing claimant's late request for hearing and affirming decision # 141637. On March 21, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to file her late request for hearing is **adopted**. The remainder of this decision addresses claimant's work separation.

**WRITTEN ARGUMENT:** EAB considered claimant's argument in reaching this decision.

**FINDINGS OF FACT:** (1) Postmates, Inc. employed claimant as a delivery driver from August 7, 2020, until September 19, 2020. Claimant was hired through an automated process and was not aware of any means by which to contact anyone in authority at the company during her employment.

(2) Claimant used the employer's app to accept or reject individual delivery jobs as they became available. Claimant was paid per delivery and was responsible for her own transportation expenses. Claimant earned "almost \$400" over the course of her employment, and made as little as \$4 for a "full day" of work, after expenses. Transcript at 22-23.

(3) The app did not inform claimant of the area where a delivery would take place until after she accepted the job. Once she accepted a job, she could cancel, but would be penalized for a second cancellation within a day by not being offered other deliveries for a day.

(4) Claimant suffered from asthma since 2013 and was prescribed an inhaler. Claimant's condition was exacerbated by exposure to wildfire smoke.

(5) In September 2020, claimant lived near an area that was experiencing extensive wildfires. As a result of not being able to see the locations involved in the offered delivery jobs before accepting them, claimant accepted deliveries that would have required her to drive into the areas affected by the wildfires, causing her to cancel those jobs after accepting them and incurring the resulting penalties.

(6) On September 19, 2020, claimant quit working for the employer because of her concern over having to drive into areas actively involved in the wildfires, and because of dissatisfaction with her compensation.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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). Claimant had asthma, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

The order under review concluded that claimant quit work without good cause because she could have avoided driving into areas affected by wildfires by cancelling jobs that would have required her to drive in those locations and accepting the penalty for doing so, and therefore she did not face a grave situation. Order No. 23-UI-218892 at 5. The record does not support this conclusion.

Claimant voluntarily quit working for the employer because she was concerned about the danger of making deliveries in areas affected by ongoing wildfires due to her health condition, and because she

felt her compensation was inadequate. Though claimant was not required to accept any particular delivery job, she had no way of knowing which jobs would require her to drive into areas affected by wildfires until after she accepted them. Given claimant's health condition, she felt it necessary to cancel such jobs after accepting them, which precluded claimant from being offered other work for the rest of the day. As it appears from the record that claimant was already making far less than the minimum wage, as suggested by net earnings of \$4 for a day of work, and a total net earnings of \$400 over her six weeks of employment, continuing to incur suspensions from work as a penalty for canceling jobs that would have taken her into wildfire areas was untenable. Under the circumstances, no reasonable and prudent person with the characteristics and qualities of an individual with an impairment such as claimant's would have continued to work for their employer for an additional period of time.

Further, claimant had no reasonable alternatives to quitting. The record shows that claimant's only alternative to making deliveries into areas actively involved in wildfires was to cancel such jobs after she accepted them. As discussed above, this alternative was not reasonable because of the penalty claimant incurred for such cancellations, and the impact of that penalty in light of her overall compensation. Claimant was not aware of any means by which she could have raised her concerns or sought accommodation from the employer, as every step in the employment process from hiring to her resignation was automated and done through the employer's app without the ability to interact with a person. Accordingly, claimant had no reasonable alternative to leaving work.

For these reasons, claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 23-UI-218892 is set aside, as outlined above.

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

**DATE of Service:** May 1, 2023

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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