

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0487**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective December 4, 2022 (decision # 143510). Claimant filed a timely request for hearing. On April 12, 2023, ALJ Griffin conducted a hearing, and on April 13, 2023 issued Order No. 23-UI-221975, affirming decision # 143510. On April 25, 2023, 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 he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Walmart Associates Inc. employed claimant as a custodian, and later a lead custodian, from July 1, 2019 until December 7, 2022.

(2) In 2022, claimant believed that the team he supervised began to have difficulty completing its assigned tasks due to inoperable cleaning equipment and management's reassignment of custodial staff to other store duties. These difficulties continued through the end of claimant's employment.

(3) On July 28, 2022, claimant received feedback from his manager regarding his team's inadequate performance and directed claimant to supervise his subordinates better.

(4) Claimant, concerned about his team's inability to achieve the employer's desired results, requested a voluntary demotion or a transfer to another position, but neither request was granted at that time. He also applied for positions with other employers.

(5) In late November or early December 2022, the employer issued claimant a disciplinary warning regarding his team's failure to accomplish assigned tasks and claimant's need to either ensure that the

team met performance standards or take disciplinary measures against his subordinates who were underperforming.

(6) The employer utilized a progressive disciplinary warning system. Claimant's warning was considered the lowest level of warning and was not accompanied by other specific consequences to his employment such as restricting his ability to be promoted, voluntarily demote, or transfer to another position. Claimant mistakenly believed the warning invoked such restrictions. Claimant was entitled to multiple levels of appeal of the warning if he disagreed with it, but did not appeal it.

(7) On December 7, 2022, claimant voluntarily quit and did not work for the employer thereafter. He decided to quit because he was fearful of receiving additional discipline or eventually being discharged due to his team's shortcomings, which he felt were outside of his control and were the fault of the employer's managerial decisions.

**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).

Claimant voluntarily quit work because he received a disciplinary warning with which he disagreed, and was fearful that additional disciplinary measures could be taken against him due to factors he believed were outside of his reasonable control. These measures, possibly including discharge, caused claimant concern for his future employment prospects. Good cause to quit work may be found if it is to avoid being discharged, not for misconduct, when the discharge was imminent, inevitable, and would be the "kiss of death" to claimant's future job prospects. *McDowell v. Employment Dep't.*, 348 Or 605, 236 P3d 722 (2010). However, the record does not demonstrate that claimant was in imminent danger of being discharged, nor that additional warnings were likely to affect his ability to obtain employment with other employers.

The warning claimant received was only the first step in a multiple-step warning process, aimed at improving claimant's work performance. As claimant quit within a few days of receiving the warning, there was no indication that claimant was at imminent risk of receiving additional warnings or being discharged without an opportunity to improve his work performance or move to a different position within the company. The employer's witness testified that despite receiving the warning, claimant retained the ability to continue seeking transfer or voluntary demotion. Audio Record at 16:54 to 17:08. Claimant had previously been pursuing these options, which would likely have improved the relationship between claimant and the employer if granted. Additionally, the asserted gravity of claimant's concerns over unjustly receiving the warning is undermined by his failure to contest the warning, despite his ability to do so. The employer's witness testified that claimant could have contested the warning "to the store lead position, to the store manager position, and even further above that to market level to potentially state his case to get it appealed and have it removed." Audio Record at 18:04 to 18:28. Because the warning did not place claimant's employment in immediate jeopardy nor damage

his prospects for other employment, and claimant took no action to express his disagreement with the warning or have it rescinded, claimant did not face a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. Claimant has therefore not shown good cause for quitting work when he did.

Further, claimant had reasonable alternatives to leaving, such as appealing the warning he received, and continuing to pursue other non-supervisory positions with the employer. Though claimant may have assumed his ability to seek other positions with the employer was restricted due to receiving the warning, the record does not show that claimant made sufficient inquiry into the effects of the warning, nor into disputing the warning itself, to conclude that pursuing these options would have been futile. Accordingly, they were reasonable alternatives to leaving.

Therefore, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective December 4, 2022.

**DECISION:** Order No. 23-UI-221975 is affirmed.

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

**DATE of Service:** June 1, 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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