

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0531**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 25, 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 unemployment insurance benefits effective June 20, 2021 (decision # 111259). On April 14, 2022, decision # 111259 became final without claimant having filed a request for hearing. On May 3, 2022, claimant filed a late request for hearing on decision # 111259. ALJ Kangas considered claimant's request, and on August 9, 2022 issued Order No. 22-UI-200160, dismissing claimant's request for hearing on decision # 111259 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 23, 2022. On August 29, 2022, Order No. 22-UI-200160 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 21, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 22-UI-200160 with EAB. On January 14, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding the matter because the questionnaire response was late.

On February 1, 2023, EAB issued EAB Decision 2023-EAB-0115,<sup>1</sup> dismissing claimant's late application for review of Order No. 22-UI-200160 without prejudice. On February 9, 2023, claimant filed a request for reconsideration of EAB Decision 2023-EAB-0115. On March 17, 2023, EAB issued EAB Decision 2023-EAB-0115-R,<sup>2</sup> allowing claimant's request for reconsideration, allowing claimant's late application for review of Order No. 22-UI-200160, allowing claimant's late request for hearing on decision # 111259, and remanding the matter for a hearing on the merits of decision # 111259.

<sup>1</sup> EAB Decision 2023-EAB-0115 was issued in triplicate with EAB Decisions 2023-EAB-0114 and 2023-EAB-0116, two cases with which it had been consolidated.

<sup>2</sup> EAB Decision 2023-EAB-0115-R was issued in triplicate with EAB Decisions 2023-EAB-0114-R and 2023-EAB-0116-R, two cases with which it had been consolidated.

On April 10, 2023, ALJ Goodrich conducted a hearing at which the employer failed to appear, and on April 18, 2023 issued Order No. 23-UI-222455 affirming decision # 111259. On May 7, 2023, claimant filed an application for review of Order No. 23-UI-222455 with EAB.

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) 89 Steak House employed claimant as a server from late February 2021 until June 26, 2021. The employer operated a restaurant located in Sedona, Arizona. During his employment, claimant received about 20 to 30 hours of work per week from the employer.

(2) During the time that claimant worked for the employer, he lived in his van on Bureau of Land Management (BLM) land located near Sedona. Claimant could park his van and live on the BLM land free of charge as long as he moved to a different unit of the land every two weeks. However, the BLM land was desert scrubland, without any shade, and became very hot in the summer. By June 2021, the temperature inside claimant’s van typically reached 120 degrees Fahrenheit. Although claimant did not suffer from any medical conditions, living in the van on BLM land was very uncomfortable and claimant felt as though he “was burning up there in the desert.” Audio Record at 18:48.

(3) There were shade trees under which claimant could park his van in Sedona. However, the authorities in Sedona did not allow people to sleep in their vehicles overnight within city limits. Claimant could not find housing within Sedona where he could live without experiencing extreme temperatures because housing in Sedona was too expensive for claimant to afford. Claimant was able to bathe at the home of a friend in Sedona once per week, but he had no friends or coworkers in Sedona with whom he could live and thereby avoid the extreme heat.

(4) In early to mid-June 2021, claimant’s sister, who lived in Bend, Oregon, offered to allow claimant to park his van in her backyard and live on her property rent-free. On or about the same time, claimant’s friend informed him that she had been promoted to chef at a restaurant in Bend. The friend told claimant that she would be hiring a full staff at the restaurant and intended to offer claimant one of the jobs she was going to fill.

(5) Claimant decided that he could no longer live on the BLM land, and on June 12, 2021, gave notice of his intent to quit working for the employer effective June 26, 2021. On June 26, 2021, claimant quit working for the employer as planned and relocated to his sister’s property in Bend. Eventually, claimant took a job at the restaurant in Bend where his friend was chef.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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) (December 23, 2018). “[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.

The order under review concluded that claimant left work without good cause. Order No. 23-UI-222455 at 3. The record does not support this conclusion.

Claimant had good cause to leave work when he did to relocate to his sister’s property in Bend and thereby avoid the extreme temperatures he experienced living on the BLM land near Sedona. The record shows that the BLM land was desert scrubland, without any shade, and became very hot in the summer. The heat was such that by June 2021, the temperature inside claimant’s van typically reached 120 degrees Fahrenheit. The extreme temperatures were likely to worsen in July and August. While claimant may not have suffered from any medical conditions as of when he quit, the extreme temperatures he experienced nevertheless posed a significant risk to his health and safety and therefore presented him with a grave situation. Quitting work was beneficial to claimant because quitting enabled him to relocate to his sister’s property in Bend. More likely than not, claimant’s sister’s property in Bend provided a living situation free of extreme heat or, at minimum, posed less of a threat of high temperatures than the BLM land by Sedona. This is so because shade given off by trees or other structures (and under which claimant could park his van) was likely present on the sister’s property and other means for staying cool, such as temporarily staying inside the sister’s home, were likely available to claimant.

Reasonable alternatives to leaving work were not available to claimant. There were shade trees under which claimant could park his van in Sedona. However, the authorities in Sedona did not allow people to sleep in their vehicles overnight within city limits. Claimant could not find housing within Sedona where he could live without experiencing extreme temperatures because housing in Sedona was too expensive for claimant to afford. Claimant was able to bathe at the home of a friend in Sedona once per week, but he had no friends or coworkers in Sedona with whom he could live and thereby avoid the extreme heat. A reasonable and prudent person in claimant’s position would have done as claimant did and opted to relocate to his sister’s property where he could avoid the extreme temperatures on the BLM land.

For these reasons, claimant quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 23-UI-222455 is set aside, as outlined above.

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

**DATE of Service:** June 14, 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.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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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