

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0536**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 9, 2023, 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 benefits effective June 12, 2022 (decision # 85826). Claimant filed a timely request for hearing. On April 3 and 17, 2023 ALJ Taylor conducted a hearing, and on April 21, 2023, issued Order No. 23-UI-222931, affirming decision # 85826.<sup>1</sup> On May 10, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) S & S Handyman Service employed claimant as a carpenter from May 31 to June 17, 2022.

(2) Claimant's labor market area was Rogue Valley, which includes Josephine and Jackson Counties. The median rate of pay for a carpenter in the Rogue Valley labor market area was \$23.02.

(3) Claimant believed that when he was hired, the employer agreed to pay him \$28 per hour. The employer maintained that the parties agreed to a \$25 per hour rate of pay. From the May 31, 2022 date claimant was hired until claimant's June 17, 2022 work separation, claimant earned \$25 per hour working for the employer but was unaware it was not \$28 per hour because he had not yet received his first paycheck.

(4) In the late afternoon of June 16, 2022, the employer arrived at the work site with a load of cinder blocks. The employer told claimant and his coworkers to unload the blocks. Claimant and the coworkers began doing so. Claimant realized that the blocks were heavy and became concerned he would injure himself. Claimant stopped unloading the blocks and started sweeping a sidewalk instead. Moments later, the employer yelled claimant's name and stated that claimant was "milking him for hours[.]" April 3, 2023 Transcript at 12. In response, claimant asked the employer why "he was being a dick." April 3,

<sup>1</sup> Though Order No. 23-UI-222931 stated that it set aside decision # 85826, this appears to be a scrivener's error, as it affirmed that claimant was disqualified from receiving benefits effective June 12, 2022. Order No. 23-UI-222931 at 3.

2022 Transcript at 18. The employer told claimant to go home early and stay home from work the next day. Claimant went home for the rest of the day as directed.

(5) The next day, Friday June 17, 2022, claimant went to the work site to retrieve his tools because he planned to do a side job for a friend over the weekend. While unlocking the structure where the tools were located, the employer asked claimant, “do you want to talk about this now or Monday?” April 3, 2022 Transcript at 9. Claimant opted to have a discussion at that time. The employer then told claimant that he intended to pay claimant \$21 per hour going forward because he was unhappy with the quality of claimant’s work and that claimant could either take it or leave it. Claimant responded “fine” and that he “will leave the job.” April 3, 2023 Transcript at 9. Claimant then departed the work site and quit working for the employer.

(6) In addition to the reduction in rate of pay, claimant quit working for the employer because he considered the employer abusive, especially on June 16, 2022 when the employer accused claimant of “milking” hours, sent him home early, and told him to stay home from work the next day. April 3, 2023 Transcript at 16.

(7) At some point after claimant quit working for the employer, he received his paycheck and discovered he had earned only \$25 per hour, rather than \$28 per hour, for his work for the employer.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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). 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.

At hearing, claimant testified that he quit on June 17, 2022, and that the determining factors motivating him to do so were the reduction in his rate of pay to \$21 per hour and the employer telling claimant he was “milking him for hours.” April 3, 2023 Transcript at 5, 15-16. Claimant also complained that he earned only \$25 per hour during his May 31, 2022 through June 17, 2022 period of employment, and not the \$28 per hour claimant believed the employer agreed to pay. However, this did not factor into claimant’s decision to quit because claimant did not become aware that he been earning only \$25 per hour until he received his first (and only) paycheck after he quit. As such, the proper focus of the analysis is on the reduction in claimant’s rate of pay to \$21 and the employer’s conduct on June 16, 2022.

To the extent claimant quit work due to the reduction in his rate of pay, whether claimant quit work with good cause is governed by OAR 471-030-0038(5)(d). OAR 471-030-0038(5)(d) states that if “an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for

similar work in the individual's normal labor market area." The rule further states that the data on median rate of pay "shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the Department." OAR 471-030-0038(5)(d). However, where an individual's rate of pay is reduced as a result of a demotion, OAR 471-030-0038(5)(d) does not apply. OAR 471-030-0038(5)(d)(A).

Although the employer was motivated to reduce claimant's pay because he was unhappy with the quality of claimant's work as a carpenter, the reduction in claimant's rate of pay likely would not have come as the result of a demotion. At hearing, the ALJ asked the employer whether the reduced wage would have changed claimant's job title or demoted him to laborer and the employer answered that he did not know. April 3, 2023 Transcript at 31, 37. The employer explained that had claimant accepted the reduced wage, he would "kind of" perform the same work but in "different stages" until claimant could prove by "quality . . . that [he] can perform the task." April 3, 2023 Transcript at 37. Further, the employer testified that he paid all entry level carpenters \$25 per hour and all laborers \$20 per hour. April 3, 2023 Transcript at 30-31. The fact that the reduction in pay to \$21 per hour was more than the \$20 per hour baseline for laborers suggests that the reduction in pay was not intended to come as part of a demotion to laborer. In light of these points, the weight of the evidence shows that the reduced rate of pay would not have come as a result of a demotion.

The reduction in pay claimant faced was not sufficient to support good cause to quit under OAR 471-030-0038(5)(d). Per the Department's witness's testimony, the median rate of pay for similar carpenter work in claimant's labor market area was \$23.02 per hour. April 17, 2023 Transcript at 4. Claimant's reduced rate of pay was to be \$21 per hour. Ten percent below \$23.02 per hour is \$20.72 per hour. \$21 per hour is more than \$20.72 per hour, and therefore is not ten percent or more below the median rate of pay for similar work as a carpenter in claimant's labor market area. As a result, to the extent claimant quit working for the employer because of the reduction in rate of pay, he quit work without good cause.

If the reduction in claimant's rate of pay were viewed to have come as a result of a demotion, which, as discussed above, is counter to the weight of the evidence, the outcome would be the same. In that situation, whether claimant quit work with good cause would be governed by OAR 471-030-0038(4), and the issue would be whether quitting work due to a reduction from \$25 to \$21 per hour was a reason of such gravity that claimant had no reasonable alternative but to quit. The record fails to show that the reduction in claimant's pay met this standard. Of course, a pay reduction was no doubt an unwelcome development for claimant, and understandably so. However, for someone to have good cause to voluntarily leave work, they must derive some benefit from leaving work. *See Oregon Public Utility Commission v. Employment Dep't.*, 267 Or App 68, 340 P3d 136 (2014). It is not evident how quitting his job and reducing his income to zero benefited claimant when he could have continued working for lower pay. Therefore, even if this reason for quitting is governed by OAR 471-030-0038(4), claimant failed to establish good cause for leaving work.

To the extent claimant quit work due to the employer's treatment on June 16, 2022, whether claimant quit work with good cause is also governed by OAR 471-030-0038(4). Claimant failed to meet his burden to prove that he quit work with good cause based on this reason. The record shows that in the late afternoon of June 16, 2022, after claimant stopped unloading blocks, and started sweeping a sidewalk, the employer yelled claimant's name and stated that claimant was "milking him for hours[.]" April 3, 2023 Transcript at 12. The record does not show that the employer's statement subjected

claimant to abuse, oppression, name-calling, foul language, or threats of physical harm such to have rendered claimant's situation grave. Nor does the record show that claimant faced a grave situation based on the employer's decision to send him home early on June 16, 2022 or to stay home from work the next day. The employer testified that he sent all his workers home 20 minutes early that afternoon because there was no work left to be done. April 3, 2023 Transcript at 27-28. The employer further testified that if he told claimant not to come into work on June 17, 2022, it would have been for "project management" reasons, such as if he did not have a task scheduled for that day for claimant to do. April 3, 2023 Transcript at 29. Furthermore, given that claimant testified that he responded to the employer's "milking" hours comment by asking why the employer "was being a dick," the employer's sending claimant home may well have been a reasonable disciplinary measure imposed due to claimant calling the employer that name. April 3, 2022 Transcript at 18. Claimant did not establish that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would quit work under these circumstances. While the employer's conduct on June 16, 2022 may have been rude in some respects, it did not present claimant with a situation of such gravity that he had no reasonable alternative but to leave work.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective June 12, 2022.

**DECISION:** Order No. 23-UI-222931 is affirmed.

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

**DATE of Service: June 16, 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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