

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0593**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 28, 2021 (decision # 113756). Claimant filed a timely request for hearing. On May 11, 2023, ALJ Toth conducted a hearing, at which the employer failed to appear, and on May 19, 2023 issued Order No. 23-UI-225491, affirming decision # 113756. On May 24, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Portland Nanny LLC employed claimant from February 2020 until April 2, 2021.

(2) Claimant worked as a substitute nanny providing childcare. She performed this work in clients' homes and would routinely work in multiple homes each week.

(3) In early March 2020, the employer stopped performing services for its clients due to the COVID-19 pandemic. The employer sent an email to all employees in claimant's position stating that they were pausing all work for nannies. Audio Record 11:26 to 11:51. At this point, claimant was furloughed until the employer had work for claimant to perform.

(4) Claimant lived with several roommates and one of these roommates was immunocompromised. Claimant and her roommates agreed to "have a really tight pod and we couldn't have outside risk" in order to reduce the risk of the immunocompromised individual contracting COVID-19. Audio Record 16:01 to 16:08.

(5) Around March 2021, the employer began resuming operations. Claimant's manager told claimant this, and claimant replied that because of her immunocompromised roommate, she wanted to wait to return to her position. The employer later informed claimant that they needed her to work a minimum number of hours per week if she desired to continue in the employment relationship, but claimant refused to work any hours for the employer.

(6) At the time claimant refused to work any hours for the employer, claimant was willing to return to work, but only if she was limited to working within a single house rather than being assigned to multiple different houses. Claimant did not discuss this condition with the employer because she believed that the employer would not accommodate it. Claimant also did not inquire whether any other positions were available to which she might transfer that would not require working in client homes.

(7) On April 2, 2021, the employer sent claimant a message stating that they were discharging her.

**CONCLUSION AND REASONS:** Claimant quit work without good cause.

**Nature of the work separation:** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Though claimant stated that she believed she was discharged, and the employer sent claimant a message stating that she was discharged, the record shows that the work separation was a voluntary quit that occurred when claimant refused to return to work. Audio Record 9:00 to 9:04, 10:31 to 10:45. When the employer communicated with claimant that they were restarting their operations, claimant refused to return to her previous position. The employer specified a minimum number of hours that they required claimant to work in order to maintain the employment relationship, thereby offering claimant work for an additional period of time. Claimant testified she felt returning to work presented too high a risk of contracting COVID-19 and passing it along to her roommate, and she therefore declined to work any hours. Audio Record at 21:20 to 22:07. Accordingly, the record shows that claimant could have continued working for the employer for an additional period of time, but that claimant was unwilling to perform this work. The final opportunity for claimant to accept the work was April 2, 2021, after which the employer considered claimant's ongoing refusal to work as having severed the employment relationship. Therefore, the work separation was a voluntary quit that occurred on April 2, 2021.

**Voluntary Leaving:** ORS 657.176(2)(c) requires a disqualification from unemployment insurance benefits if a claimant voluntarily leaves (quits) work without good cause. *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, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0038. OAR 471-030-0071 (September 13, 2020). Paragraph (2)(b) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), effective September 13, 2020 through September 25, 2021, <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides that a person who quits work because of a COVID-19 related

situation is not disqualified from receiving unemployment insurance benefits. Under OED Temporary COVID-19 Rule (1), a COVID-19 related situation includes the following:

\* \* \*

(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;

\* \* \*

Preliminary, claimant has not shown that her reason for quitting constituted a COVID-19 related situation according to the temporary rules in place at the time. The record shows that claimant quit because she and her roommates made an agreement to limit outside interactions to mitigate the risk of their immunocompromised roommate contracting COVID-19. However, the record does not show that claimant was required to stay home to care for this individual, that this individual was suffering from COVID-19, or that this individual was subject to a mandatory quarantine. As such, the record does not show that claimant's agreement with her roommates to limit outside interactions constituted a COVID-19 related situation under the rule. Claimant's voluntary leaving must therefore be assessed under the ordinary "good cause" standard under OAR 471-030-0038(4).

Claimant has not established that her reason for leaving work was a situation of such gravity that there was no reasonable alternative but to leave. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work in order to indefinitely continue a self-imposed quarantine that had already lasted more than a year for the benefit of a roommate.

However, even if the potential increase in risk to claimant's immunocompromised roommate posed by claimant's return to work created a grave situation, claimant had reasonable alternatives to quitting that she did not pursue. Claimant was willing to return to work for the employer if she could do so by only performing her work within a single household so as to avoid excessive outside contacts. Claimant did not inquire of the employer whether such an arrangement was possible, and the record does not demonstrate that such a request would have been futile. Because claimant did not face a grave situation such that she had no reasonable alternative but to leave work, she quit work without good cause.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 28, 2021.

**DECISION:** Order No. 23-UI-225491 is affirmed.

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

**DATE of Service:** June 29, 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 الاستئناف 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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