

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0639**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 27, 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 February 26, 2023 (decision # 83501). Claimant filed a timely request for hearing. On May 25, 2023, ALJ Nyberg conducted a hearing, and on June 2, 2023 issued Order No. 23-UI-226767, affirming decision # 83501. On June 5, 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) The City of Ashland employed claimant as a journeyman line installer from April 16, 2012 until March 2, 2023.

(2) Claimant's position was covered by a collective bargaining agreement (CBA) between the employer and claimant's union. Among other provisions, the CBA required claimant and others in his position to live within 30 miles or a 45-minute commute time of the employer's main work site, so that they would be available to respond to emergency power outages.<sup>1</sup> This provision had been present in the CBA for several years. Prior to his separation from work, claimant was on the bargaining team for his union, helped negotiate the union's most recent contract with the employer, and was therefore generally familiar with the CBA's requirements.

(3) In or around July 2021, claimant moved to a home he had purchased in Grants Pass, Oregon, which was approximately 10 miles outside of the distance allowed by the CBA, but still within the 45-minute commuting time required by the CBA. Prior to July 2021, claimant had lived less than 30 miles away from the employer's main work site. Claimant notified the employer of his address change when he moved.

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<sup>1</sup> The exact wording of the applicable provisions of the CBA, as discussed in the analysis, below, is in dispute.

(4) The employer eventually learned that claimant had moved further than 30 miles away from the employer's main work site, which they believed put him in violation of the CBA. As a result, on February 28, 2023, the employer notified claimant in writing that he had 90 days to move closer to the employer's main work site, so as to be in compliance with the CBA, or he would be discharged.

(5) Claimant was not willing or able to sell his house and move. The employer did not have any other positions that claimant could have transferred into which would have allowed him to continue living at his current address.

(6) On March 2, 2023, claimant quit work because the employer had required him to move within 90 days or be discharged. Had claimant not quit that day, the employer would have permitted him to continue working until 90 days after February 28, 2023.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-226767 is reversed and this matter remanded for further development of the record to determine whether claimant 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). 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.

Under OAR 471-030-0038(5)(b)(F), "good cause" does not include resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct. Under OAR 471-030-0038(5)(f), where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Claimant quit work because the employer had notified him that he was out of compliance with the CBA's requirement that he live within a specific commute distance or time, and that he would be discharged if he did not comply with the requirement within 90 days. The order under review concluded that this did not constitute good cause for quitting because claimant "did not exercise the available, reasonable alternative to quitting of continuing to work for an additional period of time until he was discharged." Order No. 23-UI-226767 at 3. The record as developed does not support this conclusion.

First, the record as developed is silent as to why claimant chose to quit in early March 2023 when the employer would have permitted him to continue working for nearly another three months, even if he did not move within the required distance from the employer's main work site. On remand, the ALJ should inquire as to why claimant chose to quit when he did, rather than work through the end of the 90-day period and then be discharged.

Next, the record contains a dispute of material fact that the ALJ should attempt to resolve on remand. At hearing, the director of claimant's department testified that the applicable portion of the CBA required employees to live within a 30-mile radius *and* a 45-minute commute time from the employer's location. Audio Record at 10:12. By contrast, claimant testified that the CBA only required that employees meet one of those two requirements. Audio Record at 20:29. On remand, the ALJ should clarify what union claimant was in and, to the extent possible, request that the parties read the applicable CBA language into the record. The parties may also wish to submit a copy of that portion of the CBA into the record for consideration as an exhibit. Confirming what the language in the CBA actually states is relevant because the record as developed does not make clear whether claimant was genuinely in violation of its terms, or whether the employer merely alleged as such. In either case, the ALJ should further develop the record to show whether any remedies through the union (such as a grievance process or arbitration) were available to claimant and, if they were available to him, why he did not pursue them.

Finally, if the record on remand shows that claimant's move *did* put him in violation of the CBA, the ALJ should inquire as to whether claimant actually knew that he would be in violation if he moved and, if so, what circumstances caused him to move where and when he did despite that knowledge. Such an inquiry is necessary to determine whether claimant resigned to avoid a potential discharge for misconduct, or whether the gravity of the situation experienced by claimant resulted from his own deliberate actions, subject to examination in accordance with the provisions of OAR 471-030-0038(4).

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant quit work with good cause, Order No. 23-UI-226767 is reversed, and this matter is remanded.

**DECISION:** Order No. 23-UI-226767 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 18, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-226767 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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.

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