

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0795**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 19, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective April 2, 2023 (decision # 113130). Claimant filed a timely request for hearing. On July 6, 2023, ALJ Enyinnaya conducted a hearing, and on July 14, 2023 issued Order No. 23-UI-230556, affirming decision # 113130. On July 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted a written argument on August 13, 2023. Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

Claimant also asserted that the hearing proceedings were unfair or the ALJ was biased. Claimant asserted two main concerns regarding the fairness of the proceedings. First, claimant asserted that the ALJ "is a 'spiritual speaker' and associated with the employer at some level," which "may explain her bias behavior toward the claimant during the hearing[.]" Claimant's Written Argument at 3. Claimant also suggested that the ALJ should have recused herself from the proceeding. Claimant's Written Argument at 3.

Claimant's Written Argument does not assert why he waited to raise his concern about the ALJ's impartiality until nearly a month after the order under review was issued. OAR 471-060-0005 (June 8, 2021) outlines procedures for requesting a change of ALJ. In relevant part, that rule requires that:

\* \* \*

(4) All requests must be in writing and sent or delivered to the Chief Administrative Law Judge or designee by filing the request with the Office of Administrative Hearings by hand delivery, mail, facsimile transmission, or electronic mail. All requests must be filed within 10 business days after an administrative law judge is assigned to the case.

\* \* \*

(b) The time for filing a request for a change of the administrative law judge assigned to the case may be extended if the party or agency making the request can demonstrate that the failure to make a timely request was caused by an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party, agency, or the Office of Administrative Hearings relating to procedural requirements. In such cases, the party or agency may file the request within 10 business days after the circumstances that prevented a timely filing have come to an end.

OAR 471-060-0005. Under OAR 471-060-0005(2)(a), an ALJ is “‘assigned to the case’ when a written notice is sent to a party or agency naming the administrative law judge to preside over a contested case, or the date a party or agency has actual notice of the assignment, whichever is earlier.” While the hearing in this matter was held on July 6, 2023, the hearing was originally scheduled for June 21, 2023, per the original Notice of Hearing mailed to the parties on June 7, 2023. Thus, under OAR 471-060-0005, the ALJ was “assigned to the case” on June 7, 2023, and a timely request for a change of ALJ was therefore due by June 17, 2023, absent a showing that claimant was unable to file such a request due to an excusable mistake, surprise, excusable neglect, reasonable reliance on the statement of a party, agency, or the Office of Administrative Hearings relating to procedural requirements.

Claimant has not shown that he met any of the above procedural requirements for such a change. The record does not show that claimant sent a request for a change of ALJ to the Chief ALJ or designee, that claimant filed a request within ten days after the ALJ was assigned, or that the failure to file a request by that deadline was the result of any of the exceptions under OAR 471-060-0005(4)(b). Therefore, to the extent that claimant's argument here constitutes a request for a change of ALJ, claimant's request is denied.

Furthermore, although claimant asserted that the ALJ's alleged association with the employer caused “bias” against claimant, claimant did not identify any evidence to support the allegation that the ALJ was biased against him. The mere fact that claimant did not prevail at hearing does not prove bias. Furthermore, as detailed below, the record supports the order's conclusion because it does not show by a preponderance of evidence that claimant had good cause to voluntarily quit work when he did. Thus, claimant has not shown that any alleged association that the ALJ might have had with the employer prejudiced claimant at hearing. Moreover, claimant did not establish that the ALJ actually has any

association with the employer, since the only support for this contention offered in the written argument is the assertion that the claimant's representative had conducted "research[]" and "learned" that the ALJ is "associated with the employer at some level." Claimant's Written Argument at 3. This vague assertion, without any supporting information, is not sufficient to show any association between the ALJ and the employer.

Second, claimant asserted in his argument that the ALJ "did not permit" one of claimant's witnesses to testify, "but was aware that the witness was trying to call in to participate but due to telephone difficulties with the ALJ's line was unable to get through." Claimant's Written Argument at 3-4. Claimant attached to his argument a series of text messages, apparently from the would-be witness, indicating her attempts to join the hearing call. There is no indication in the record that claimant or his representative requested a continuation of the hearing in order to permit this person to testify, nor does claimant's argument explain how the individual's "telephone difficulties" were attributable to the ALJ.

Furthermore, claimant's written argument failed to identify any additional relevant evidence that the witness could have provided. Instead, it appears that the potential witness would have offered testimony only for purposes of corroborating claimant's testimony. *See* Claimant's Written Argument at 3-4. None of claimant's testimony material to the outcome in this matter was in dispute. Thus, additional testimony to corroborate claimant's testimony would have been unnecessary. Therefore, even if the ALJ erred in excluding this additional testimony, such error was harmless and not prejudicial to claimant. *See* OAR 471-040-0025(5).

EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

**FINDINGS OF FACT:** (1) Sunset Presbyterian Church employed claimant as a ministry host from June 26, 2018 until April 4, 2023. Claimant's job included some cleaning and maintenance duties.

(2) In July 2022, the employer gave claimant and the other ministry hosts pay raises, in order to keep pace with the recent statewide minimum-wage increase. Claimant later believed that he would be due for another pay raise in or around December 2022. However, the employer did not give claimant another raise at that time, primarily because they had already given him a raise in July 2022. Based on information from his then-supervisor, claimant also believed that he would get a "stipend" or "bonus" in relation to an event in which the employer participated. Transcript at 21. Claimant never received this sum of money.

(3) In March 2023, a member of the employer's leadership team told claimant that claimant had not been given a raise because he was caught sleeping on the job. Claimant believed this allegation to be false.

(4) In or around March 2023, the employer "los[t]" their janitorial staff, who had previously been responsible for keeping the restrooms clean. Transcript at 51. Prior to this, claimant and the other ministry hosts were only responsible for spot-checking the janitorial staff's work, rather than fully cleaning the bathrooms. The employer told claimant and the other ministry hosts that if they wished to take over cleaning the bathrooms due to the janitorial staff's departure, they could do so; that the employer "would monitor their work for a certain amount of time, and if they wanted to" continue

performing the additional work, “they . . . maybe would be paid an increase.” Transcript at 51–52. The ministry hosts were not required to perform the additional work if they did not wish to. Nevertheless, claimant felt that he should be paid more in order to perform that work.

(5) In the last several months of his employment, claimant came to feel that the employer’s workplace had become a “toxic environment” with poor “communication skills,” and that he had been “harassed” and “bullied.” Transcript at 5–6. Claimant felt that the workplace was “toxic,” in part, due to his being denied an additional raise after July 2022. Claimant felt that he had been “bullied,” in part, because one of the members of leadership asked claimant to work on his own while shoveling snow, rather than as part of a group. Claimant felt that the accusation of sleeping on the job constituted “harassment.” Transcript at 14–15.

(6) In the last several months of his employment, claimant “began experiencing increased stress and anxiety” which he attributed to the work environment. Exhibit 1 at 5. Claimant sought advice from his physician regarding these issues, and took time off work to see if they improved. Claimant’s physician diagnosed claimant with generalized anxiety disorder.

(7) On March 23, 2023, claimant attended the employer’s weekly staff meeting, which was also attended by most of the church’s leadership and other ministry hosts. The meeting included “clarification around tasks and cleaning things.” Transcript at 40. At that point, claimant stated that he wanted to be paid more if he was expected to clean the bathrooms. When the employer did not agree to pay him more, claimant told the employer that he was giving his two weeks’ notice of resignation. Claimant later confirmed via email that his last day would be April 6, 2023.

(8) Although the employer would have permitted claimant to continue working until April 6, 2023, they also offered to allow him to leave two days early and pay him for the remainder of the notice period, in order to allow claimant more time to find a new job. On April 4, 2023, claimant completed his last day of work for the employer.

**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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had generalized anxiety disorder, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Based on his testimony and documentary evidence, claimant quit for a variety of different reasons which included stress and anxiety that he attributed to work, his belief that the workplace was “toxic” and that he was subjected to “harassment” and “bullying,” and his belief that for various reasons, he should have

been paid more. As a preliminary matter, the record shows that, irrespective of these other concerns, claimant made the decision to resign during a meeting on March 23, 2023, when the employer denied claimant's request to be paid more in order to complete additional cleaning duties. Therefore, claimant's dissatisfaction with his compensation was, more likely than not, the proximate cause of claimant's decision to quit at the time that he did. Although claimant's desire for greater pay was understandable, claimant did not show that the employer's continued refusal to give him another raise or bonus, aside from the July 2022 raise, constituted a grave situation. A reasonable and prudent person, even one suffering from claimant's chronic medical condition, would not have left work for this reason. Therefore, to the extent that claimant quit because of the employer's refusal to pay him more, claimant did not quit for a reason of such gravity that he had no reasonable alternative but to quit.

Further, to the extent that claimant quit for any of the other reasons outlined above, claimant also has not met his burden to show that they constituted grave reasons for quitting. Claimant's concerns regarding "harassment" and "bullying," for instance, were due to being told he did not receive a raise because he allegedly was sleeping on the job, and having to shovel snow solo rather than with a group. Claimant did not show that a reasonable and prudent person, faced with such concerns, would have quit work. Similarly, while claimant's medical concerns purportedly related to work—stress and anxiety—were understandable, claimant did not show that these concerns became so severe or unmanageable that a reasonable and prudent person, suffering from generalized anxiety disorder, would have concluded that they had no reasonable alternative but to leave work.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective April 2, 2023.

**DECISION:** Order No. 23-UI-230556 is affirmed.

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

**DATE of Service:** August 31, 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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