

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0978**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 17, 2023, the Oregon Employment department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 11, 2023 (decision # 103602). Claimant filed a timely request for hearing. On August 23, 2023, ALJ Enyinnaya conducted a hearing, and on August 29, 2023, issued Order No. 23-UI-234525, reversing decision # 103602 by concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving benefits based on the work separation. On August 31, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) City of Hillsboro employed claimant as an information systems analyst from October 13, 2013, until June 16, 2023.

(2) While employed, claimant and his wife of 41 years lived in a motor home on their daughter's property in Forest Grove, Oregon, within a short distance of claimant's place of employment in Hillsboro, Oregon.

(3) In 2016, claimant and his wife purchased a mobile home located in Tygh Valley, Oregon, approximately 140 miles from Hillsboro. The roads between Tygh Valley and Hillsboro are typically impassible at various times during winter.

(4) Beginning in approximately 2020, claimant was permitted to work from home some of the time under a temporary policy instituted by the employer. Claimant was required to report to the employer's office in Hillsboro at least once per week as of 2023. The employer's policies generally did not allow for fully remote work for claimant's position in May 2023. However, the employer decided that they would transfer claimant to a new position and supervisor in the coming months, and different remote work policies may have then applied. Claimant did not seek a fully remote work arrangement with the employer prior to quitting because he believed such an arrangement would not have been permitted by the employer's policies.

(5) On May 13, 2023, after retiring from her employment, claimant's wife moved to the Tygh Valley home. She intended to remain living there regardless of whether claimant joined her. Claimant intended to quit work in order to relocate with his wife.

(6) On June 9, 2023, claimant moved his belongings to the Tygh Valley home. Claimant told the employer he was resigning effective June 16, 2023, and was granted paid leave by the employer from that date until June 16, 2023, which he used to visit family out of state.

(7) On June 16, 2023, claimant quit working for the employer so that he could live with his wife at the Tygh Valley home.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-234525 is set aside, and this matter remanded for further development of the record.

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.

Where the gravity of the situation experienced by an 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).

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. "Compelling family reasons" is defined under OAR 471-030-0038(1)(e) as follows:

\* \* \*

(C) The need to accompany the individual's spouse or domestic partner;

(i) To a place from which it is impractical for such individual to commute;  
and

(ii) Due to a change in location of the spouse's or domestic partner's employment.

\* \* \*

The order under review concluded that claimant voluntarily quit work due to a “compelling family reason under OAR 471-030-0038(5)(g),” and therefore did so with good cause. Order No. 23-UI-234525 at 3. The record does not support that claimant quit work due to a change in the location of his wife’s employment, and therefore that he quit work due to a compelling family reason. However, further development of the record is needed to determine whether claimant’s reasons for quitting work otherwise constituted good cause.

Claimant voluntarily quit work because his wife decided to retire and move to their property in Tygh Valley, and claimant desired to move with her. The record shows that it would have been impractical for claimant to commute to Hillsboro from Tygh Valley, even if only once per week, due to the length of the commute and periodically impassable road conditions. That the employer’s policies apparently did not allow for fully remote work suggests that such a commute would have been required for claimant to maintain his job. However, as claimant’s wife was no longer employed after the move, claimant did not show that he was moving due to a change in the location of his wife’s employment. Accordingly, he did not quit for a “compelling family reason” as that term is defined in OAR 471-030-0038(1)(e)(C).

Further development of the record is needed, however, to determine whether claimant’s wife’s move constituted a situation of such gravity that no reasonable and prudent person would have continued to work for their employer for an additional period of time under the circumstances. Being forced to choose between maintaining one’s employment or not being involuntarily separated by a great distance from their spouse may be a circumstance sufficiently grave to warrant quitting work. However, a mutual plan by a couple to retire, whereby one spouse precedes the other in moving to the retirement residence, resulting in the other spouse having to make such a choice, might not be such an instance. Whether the need to make such a choice was a result of claimant’s deliberate actions in forming or agreeing to the retirement plan is an important factor in determining whether claimant faced a grave situation.

While claimant’s wife’s desire to retire and move away from the Hillsboro area was apparent in the record, the extent of claimant’s involvement in those plans is unclear. That the couple purchased the Tygh Valley home in 2016 in an area distant from where they lived and worked at the time, and where presumably far fewer employment opportunities for them existed than in the Hillsboro area, suggests that the purchase may have been made with the couple’s retirement in mind. Claimant’s testimony suggested that his wife was unhappy with their living arrangements in a motor home on their daughter’s property near claimant’s work in Hillsboro, but otherwise did not explain why his wife decided to retire from work when she did, nor did it reveal whether claimant had a say in that decision. The record is also unclear as to whether claimant agreed with his wife’s decision to move, whether he attempted to persuade her to stay in the Hillsboro area so he could continue working for the employer while living with her, and what steps he took or could have taken, if any, to remedy his wife’s dissatisfaction with their living situation, short of moving to Tygh Valley. Accordingly, further development of the record as to these issues is needed.

On remand, the ALJ should inquire as to the couple’s intentions in purchasing the Tygh Valley home in 2016, and whether the purchase was part of a retirement plan formed by one or both spouses. Inquiry should also be made into whether plans were made regarding when each spouse would retire or move to Tygh Valley, and claimant’s role in forming or agreeing to such plans. If claimant’s wife unexpectedly and unilaterally changed their plans by retiring and moving to Tygh Valley in May 2023, inquiry should be made into why she made those decisions and what, if anything, claimant did to attempt to prevent her

from doing so in order to maintain his employment. Inquiry should also be made into any other circumstances relevant to whether claimant faced a grave situation causing him to quit work.

Additionally, if claimant is found to have quit work because he faced a grave situation, further inquiry should be made on remand into whether a reasonable alternative to quitting was available. Claimant's supervisor testified that claimant was in the process of being transferred to a position under the supervision of another person at the time claimant quit, and that he did not know if claimant's new supervisor would "have the latitude to have people work fully remotely." Transcript at 19-20. The employer did not rebut claimant's assertion that the policies generally did not permit fully remote work. Further, the record does not suggest that claimant had reason to believe that different exceptions to the remote work policies would have been applicable to claimant as the result of this impending transfer. The record therefore shows that claimant did not have a reasonable alternative of seeking fully remote work from the employer, as claimant established that, more likely than not, such an effort would have been futile under the employer's established policies. However, inquiry should be made into whether a reasonable alternative to claimant being separated from his wife existed that would have allowed claimant to remain in commuting distance of the employer and was within claimant's control to exercise.

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 voluntarily quit work without good cause, Order No. 23-UI-234525 is reversed, and this matter is remanded.

**DECISION:** Order No. 23-UI-234525 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: October 13, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-234525 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**

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**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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