

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1326**

*Modified*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 9, 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 February 12, 2023 (decision # 115936). Claimant filed a timely request for hearing. On July 19, 2023, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on August 11, 2023 issued Amended Order No. 23-UI-232955, modifying decision # 115936 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective November 13, 2022.<sup>1</sup> On August 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On September 28, 2023, EAB issued EAB Decision 2023-EAB-0906, reversing Amended Order No. 23-UI-232955 and remanding the matter for further proceedings.

On November 15, 2023, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on November 21, 2023 issued Order No. 23-UI-241640, modifying decision # 115936 by concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 13, 2022. On December 7, 2023, claimant filed an application for review of Order No. 23-UI-241640 with EAB.

**WRITTEN ARGUMENT:** 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 her 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.

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<sup>1</sup> Amended Order No. 23-UI-232955 replaced Order No. 23-UI-231261, which had been issued July 24, 2023. Order No. 23-UI-232955 was issued to amend the effective date of the disqualification from November 12, 2022 to November 13, 2022, and was issued by ALJ Mott on behalf of ALJ Amesbury. Further, although Order No. 23-UI-232955 stated that it affirmed decision # 115936, it modified that decision by changing the effective date of the disqualification from February 12, 2023 to November 13, 2022. Order No. 23-UI-232955 at 7.

**FINDINGS OF FACT:** (1) Met One Instruments, Inc. employed claimant as a marketing director from July 27, 2020 until February 15, 2023.

(2) After an initial period of working in the employer's office near her home, claimant was permitted to work primarily from home, but occasionally reported to the employer's office for work when needed. Claimant expected this remote work arrangement to continue indefinitely.

(3) On July 16, 2022, claimant began a pre-approved period of maternity leave that was scheduled to end in October 2022. Claimant gave birth on August 11, 2022. At claimant's request, claimant's supervisors approved an extension of the maternity leave to November 1, 2022.

(4) While on maternity leave, a co-worker whom claimant considered a "peer" was promoted to human resources manager, and was designated as a supervisor to claimant. July 19, 2023 Transcript at 22. Claimant felt that this promotion of a peer to be her supervisor constituted claimant being "demoted." July 19, 2023 Transcript at 22. Also during claimant's leave, the new human resources manager began working on revising the employer's remote work policies as to some positions. As a result, claimant was informed that when she returned from maternity leave, she would be required to work full-time at the office rather than remotely from home. Claimant was upset by this policy change for various reasons, including that she intended to provide care for her newborn child while working from home in coordination with her partner.

(5) On November 1, 2022, claimant returned to work after the end of her maternity leave. She attended a meeting with the new human resources director and a global marketing director who was also a supervisor to claimant. The purpose of the meeting was to notify claimant of the changes that occurred while she was on leave, particularly with respect to the requirement that she work in-person rather than remotely. Claimant repeatedly challenged the supervisors as to the reason for the policy change and was dissatisfied with their explanations. During the meeting, the supervisors suggested claimant would be unable to care for a newborn while working full-time from home, asked claimant whether she desired accommodations while in the office to express milk, and intimated that claimant being "upset" at the remote work policy change was the result of "raging pregnancy hormones." July 19, 2023 Transcript at 11. Claimant believed that this policy change and being "demoted" while on maternity leave were the result of unlawful discrimination on the basis of sex.

(6) On November 10, 2022, claimant sent an email to several supervisors, including the human resources manager, making a "formal discrimination complaint" via email against the two supervisors involved in the November 1, 2022 meeting. July 19, 2023 Transcript at 25. The human resources manager promptly replied that she "would look into it." July 19, 2023 Transcript at 26. Claimant felt that this response on behalf of the employer was inadequate given that the human resources manager was a subject of the complaint.

(7) On November 15, 2022, claimant contacted a co-worker in the employer's Australia branch to inquire whether he or other members of management were investigating her complaint. That co-worker was unaware of the complaint but told claimant he would immediately escalate the complaint to the chief executive officer (CEO) of the division where claimant worked, and did so.

(8) At 8:13 a.m. on November 16, 2022, after not receiving an immediate response from the CEO following the escalation of her complaint, claimant submitted a letter of resignation to the employer. The letter stated that claimant's resignation would have immediate effect, because she felt that the employer was not promptly responding to her complaint and that the complaint would not be resolved to her satisfaction.

(9) On November 18, 2022, the employer's chief financial officer, who was not a subject of claimant's complaint, wrote a letter which was hand-delivered to claimant that day, stating that an investigation was being conducted into her complaint and requesting that she "pause" her resignation and remain employed on paid administrative leave while the investigation was conducted. July 19, 2023 Transcript at 32. Claimant did not immediately see the letter because it was enclosed with a copy of her personnel file that she had requested and did not open. Claimant returned work equipment on November 18, 2022 at the employer's request, including her laptop, and the employer discontinued claimant's access to their networks and email at that time.

(10) On November 24, 2022, claimant read the November 18, 2022 letter and, after calling the employer, discovered that she had been on paid administrative leave since November 17, 2022. Claimant had not performed any work for the employer since November 16, 2022. Claimant accepted the paid administrative leave status and wage payments without objection at that time.

(11) Within a few days of claimant discovering that she had been placed on paid administrative leave, she retained an attorney because she "just wanted to make sure that. . . laws weren't. . . being broken" because of the way the employer was treating her. November 15, 2023 Transcript at 20-21. Claimant's attorney contacted counsel for the employer, who had hired an outside law firm to conduct the investigation into claimant's complaint. Based on this exchange, claimant and her attorney concluded that the outside law firm would be representing the employer's interests. For this reason, claimant would not participate in the investigation, which was therefore not conducted.

(12) On December 2 or 3, 2022, claimant's attorney sent a letter to the employer stating that claimant was rescinding her resignation. The employer responded that they would not allow the resignation to be rescinded. Attorneys for claimant and the employer then began negotiating a separation agreement.

(13) In December 2022, claimant first sought "counseling services" for mental and physical symptoms she began to experience in early November 2022 in connection with the conflict she was experiencing at work. November 15, 2023 Transcript at 25. She first received treatment on February 16, 2023.

(14) On February 15, 2023, a separation agreement was reached which called for claimant's resignation to become effective that date.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without good cause.

**Nature and effective date of work separation.** If an 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). "Work" means the continuing relationship between an employer

and employee. OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. OAR 471-030-0038(1)(a).

The order under review concluded that claimant voluntarily quit work on November 16, 2022. Order No. 23-UI-41640 at 8. The record supports that claimant voluntarily quit work, but shows that the work separation occurred on February 15, 2023 rather than November 16, 2022.

On November 16, 2022, claimant submitted her resignation to the employer, stating that it would have immediate effect. The employer responded on November 18, 2022 by letter, which did not explicitly state that they were accepting or rejecting her resignation. Instead, the letter stated that they would “keep” claimant on paid administrative leave and requested that she “pause” the effective date of her resignation so that an investigation into her complaint could be conducted. Exhibit 1 at 14. The employer also took back claimant’s laptop and discontinued her access to their networks on that date. The employer later rejected claimant’s attempt to rescind her resignation on approximately December 3, 2022. Claimant accepted the payment of her regular salary while on administrative leave from November 17, 2022 through February 15, 2023.

It can reasonably be inferred from these facts that the employer accepted claimant’s November 16, 2022 resignation on November 18, 2022 by relieving claimant of her work duties and removing access to the things needed to perform work tasks. However, with that acceptance came a request that claimant agree to postpone the effective date of the resignation. Claimant’s acceptance of her salary thereafter signaled agreement with the employer’s request to postpone the effective date of the resignation to a time of the employer’s choosing to accommodate their investigation. A mutual agreement between employer and employee as to when a resignation would become effective does not alter the characterization of the separation as a voluntary leaving. *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Similarly, where an employee resigns but allows the employer to choose the date upon which the resignation becomes effective, the separation remains a voluntary leaving. *Westrope v. Employment Dept.*, 144 Or App 163, 925 P2d 587 (1996). Claimant’s attempt to rescind her resignation in early December 2022 also did not alter the characterization of the work separation as a voluntary leaving. *See Counts v. Employment Dept.*, 159 Or App 22, 976 P2d 96 (1999). Accordingly, the work separation is properly characterized as a voluntary leaving.

The order under review concluded that the work separation occurred on November 16, 2022 because claimant performed no work tasks for the employer after that date, thereby signaling that the employment relationship had been severed. Order No. 23-UI-241640 at 7. The record does not support this conclusion because claimant’s status on paid administrative leave constituted an uninterrupted continuation of the employment relationship.

Though claimant ceased performing her usual work tasks for the employer on November 16, 2022, claimant nonetheless remained in an employment relationship with the employer as they continued to pay her usual salary. That the employer chose not to assign any tasks to claimant after November 16, 2022 did not alter the fact that she remained in their employ. The relationship was severed on February 15, 2023, when the parties agreed that claimant’s resignation became effective and the employer ceased paying claimant’s salary. Therefore, the voluntary leaving occurred February 15, 2023.

**Voluntary quit.** 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). “[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.

Though the employment relationship continued until February 15, 2023, the final day claimant performed her usual tasks for the employer was November 16, 2022, the day she submitted her resignation. Ordinarily, the relevant period to analyze when determining good cause includes the time between when claimant gave notice and the final day claimant worked. *See Constantine v. Employment Dept.*, 200 Or App 677, 117 P3d 279 (2005); *Ponder v. Employment Dept.*, 171 Or App 435, 448, 15 P3d 602 (2000). However, under these facts, the circumstances at the time claimant submitted her resignation are most relevant to the good cause analysis, particularly because the employer was permitted by agreement to select the effective date of the resignation, and claimant’s attempt to rescind her resignation prior to it becoming effective was rejected by the employer. Accordingly, the good cause analysis focuses on why claimant submitted her November 16, 2022 resignation.

The series of events that prompted claimant to quit work began with the employer notifying claimant of a change in policy that required her to work in-person beginning in November 2022. As claimant pushed back against the policy change, she believed that the supervisors responsible for it were unlawfully discriminating against her and otherwise causing her difficulty at work. The in-person work requirement itself may have given rise to a grave situation if it left claimant with no options for childcare, or if the requirement was imposed on claimant in a way that violated applicable law as claimant believed. However, the employer was in the process of considering claimant’s complaint about the requirement at the time she resigned, and the requirement itself therefore did not present a grave situation since the decision to implement it had not become final.

The record shows that claimant submitted her resignation *when she did* because she believed the employer was not promptly addressing her November 10, 2022 complaint and she did not believe that the complaint would be resolved to her satisfaction. After claimant sent the November 10, 2022 complaint, the employer’s human resources manager, who was also one of the subjects of the complaint, acknowledged receipt of the complaint the same day and stated that she “would look into it.” July 19, 2023 Transcript at 26. On November 15, 2022, claimant inquired about the status of the complaint with a co-worker in Australia. The co-worker stated that he would escalate the matter to the CEO of claimant’s division who was not involved in the events that gave rise to the complaint, and who claimant believed “could have helped if he’d been given time to do it.” July 19, 2023 Transcript at 30-31. Though the matter was “immediately” escalated to this CEO, claimant submitted her resignation at 8:13 a.m. the following morning because she “still hadn’t heard anything” from the CEO and “couldn’t deal with it anymore.” July 19, 2023 Transcript at 28.

Claimant did not meet her burden of showing that the in-person work requirement or the employer’s handling of her complaint regarding it constituted a grave situation because the matters were still under

consideration by the employer at the time claimant submitted her resignation. However, even if the in-person work requirement had presented a grave situation, claimant had the reasonable alternative to submitting her resignation of waiting for a response to her complaint from the CEO or another of the employer's top managers, and for a final decision on whether the in-person work requirement would be imposed over claimant's objections. Claimant's complaint was promptly acknowledged the day it was received by the employer's human resources manager. Five days later, including a weekend and a federal holiday,<sup>2</sup> claimant was told in response to her inquiry that the complaint was being immediately escalated to a CEO who she believed would help her. After not hearing directly from the CEO that day, claimant submitted a six-page resignation letter via email the following morning, addressed to that CEO and others, just minutes into the workday. Exhibit 1 at 7. Claimant explained, "When [the CEO] didn't contact me after being informed of the complaint, I had no faith in it being addressed or handled appropriately." Exhibit 3 at 14. These facts demonstrate that a final decision on the in-person work requirement had not been made since claimant's complaint was still under consideration, and that claimant had not waited a reasonable time after submitting her complaint for the employer to attempt to resolve it before resigning.

Moreover, the record fails to show that the CEO not personally contacting claimant within a matter of hours after her complaint was brought to his attention demonstrated that waiting for the employer to investigate her complaint would have been futile. To the contrary, the employer's subsequent actions of offering claimant three months of paid administrative leave as an alternative to her resignation becoming immediately effective and hiring outside counsel to investigate her complaint suggest that the complaint was being taken seriously and may have ultimately been resolved in her favor had she not resigned within a few hours of the CEO learning of the matter. Accordingly, the record shows that even if claimant faced a grave situation as a result of the in-person work requirement, claimant did not avail herself of a reasonable alternative to quitting. She therefore voluntarily quit work without good cause.

For these reasons, claimant voluntarily quit work on February 15, 2023 without good cause. She is therefore disqualified from receiving unemployment insurance benefits effective February 12, 2023.

**DECISION:** Order No. 23-UI-241640 is modified, as outlined above.

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

**DATE of Service:** January 18, 2024

**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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<sup>2</sup> *See* July 19, 2023 Transcript at 29.

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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