

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0256**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 10, 2024, 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 June 25, 2023 (decision # 60926). Claimant filed a timely request for hearing. On February 22, 2024, ALJ Adamson conducted a hearing at which the employer failed to appear, and on February 23, 2024 issued Order No. 24-UI-248728, modifying decision # 60926 by concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving benefits effective June 18, 2023. On March 11, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) The Confederated Tribes of Warm Springs employed claimant as a firefighter and emergency medical technician (EMT) from approximately July 2022 until June 24, 2023.

(2) As a firefighter and EMT, claimant was required to live and work at the employer's station for 48-hour shifts every few days. Because of the inherently dangerous nature of her work, claimant's ability to do her job safely required her to trust her chief and colleagues to watch out for her and provide backup in hazardous situations.

(3) On June 23, 2023, claimant was on shift at the employer's station with two other employees. One of the employees unplugged claimant's phone, which was plugged into a wall outlet, and tossed the phone and some of claimant's other possessions onto the floor. Claimant felt that the employee was

intentionally being disrespectful to her, and angrily told him that his actions were not right. Afterwards, both of the other employees left without speaking to claimant further.

(4) On June 24, 2023, claimant's chief called her into his office. When she arrived, claimant was directed to sit in a chair in a far corner of the room. The chief sat behind his desk, while two officers stood on opposite sides of the door to the office. Without explaining why she was called in, the chief told claimant that she was required to submit to a urinalysis (UA) test. He refused to answer claimant's questions as to why the test was required. Claimant assumed that she had been called into the meeting due to the conflict she was involved in the previous day, and offered to tell her side of the story. However, the chief told claimant that he did not care about her or her side of the story because he had already spoken to everyone else involved. Claimant nevertheless tried to explain herself, but the chief walked around from his desk, stood within a few inches of claimant's face, and repeatedly demanded that she submit to a UA test. Claimant eventually left, stating, "I'm done. I can't do this anymore." Audio Record at 10:29. As a result of the meeting with the chief, claimant felt threatened, intimidated, and humiliated.

(5) After she left the chief's office, claimant began the drive to the administration building where the UA tests were given, intending to submit to the UA test as directed. Owing to the chief's treatment of claimant, however, and particularly his statement that he did not care about her, claimant felt as if she could no longer trust him or her colleagues to keep her safe in the field. As a result, claimant decided not to complete the UA test, and quit working for the employer. Claimant's decision to quit was not motivated by the UA test requirement itself, but instead the way that the chief had treated her during the meeting.

(6) Prior to quitting, claimant did not attempt to discuss the matter with anyone higher up in command than the chief. Claimant believed that the chief answered to someone else, but did not know who that person was. Because claimant's station was located on tribal lands, no other stations or positions to which she could have transferred existed.

**CONCLUSIONS AND REASONS:** Claimant voluntarily 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.

Claimant voluntarily quit work because of the manner in which the chief had treated her during their final meeting on June 24, 2023, and, in particular, her belief that she could no longer trust him or her

colleagues after that meeting.<sup>1</sup> The order under review concluded that while it was “understandable that claimant would be compelled to exit the situation” after the meeting, the fact that claimant started towards the administration building to submit to the UA test “indicated that the situation was not so grave that claimant felt she had no choice but to leave employment.” Order No. 24-UI-248728 at 2–3. The record does not support this conclusion.

First, it should be noted that whether *claimant* felt that she had no choice but to quit is a misstatement of the applicable standard. Under OAR 471-030-0038(4), the proper analysis requires determining whether a reasonable and prudent person in claimant’s circumstances would have continued to work for the employer for an additional period of time. In other words, claimant’s subjective feelings as to whether she should have quit due to her circumstances are not relevant to determining whether she quit with good cause. Instead, claimant’s circumstances must be considered *objectively*, based on what a reasonable and prudent person would do. The record shows that a reasonable person would conclude that the situation was so grave that they had no reasonable alternative but to quit.

The full extent of the conflicts leading to claimant's decision to quit are not known, as the employer did not appear at the hearing. However, based on claimant's testimony, the record shows that claimant faced a grave situation at the time she quit. On the day before she quit, one of claimant’s coworkers threw claimant’s belongings on the ground and, when claimant objected, he apparently disregarded her and left. The following day, the chief called claimant into a meeting, seemingly about the incident the day before, but gave claimant no indication of why he was apparently displeased with her and refused to hear her side of the story. The chief also told claimant that he did not care about her, and stood inches from her face while repeatedly demanding, without explanation, that she submit to a UA test. The chief's demeanor caused claimant to feel threatened and intimidated. The behavior of the chief and of claimant's coworkers in these incidents, as well as the fact that claimant was required to live in close quarters with her coworkers for significant periods of time and depend upon them in potentially dangerous or unsafe situations, created a grave situation.

Moreover, claimant had no reasonable alternatives but to quit. Although claimant suggested at hearing that she believed the chief might have reported to a higher authority, she had no information about whom that might be. Because the record lacks evidence to show that such a person actually existed, or that claimant knew or had reason to know that they might be able to intervene in the conflict between claimant and the chief and resolve the conflict (especially given the intimate work environment claimant and the chief operated in), attempting to seek such an intervention would have more likely than not been futile, and therefore not a reasonable alternative. *See Fisher v. Employment Dept.*, 139 Or App 320, 911 P2d 975 (1996) (Before finding that claimant failed to consider reasonable alternatives to leaving work, it must be found that such alternatives existed). Additionally, owing to location of the station on tribal lands, no opportunities for transfer to a different role or duty station were available to claimant. Therefore, claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit.

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<sup>1</sup> While claimant quit almost immediately following an order that she submit to a UA test, presumably for drug, cannabis, or alcohol testing, the record shows that this was not a factor in her decision to quit. Therefore, claimant did not quit in order to avoid taking a drug, cannabis, or alcohol test, and an analysis of the work separation under the Department’s Drug, Cannabis, and Alcohol policy is not necessary. *See* ORS 657.176(10)(c).

For the above reasons, claimant voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 24-UI-248728 is set aside, as outlined above.

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

**DATE of Service:** April 22, 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.

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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  
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