

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0329**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 2, 2024, 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 November 12, 2023 (decision # 101633). Claimant filed a timely request for hearing. On March 22, 2024, ALJ Strauch conducted a hearing, and on March 28, 2024, issued Order No. 24-UI-251054, reversing decision # 101633 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On April 1, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Portland Community College employed claimant as a custodial manager from August 2019 until November 13, 2023.

(2) Claimant believed that his supervisor had a “vendetta” against custodians who were African American. Transcript at 5. Claimant believed the supervisor directed the employer’s public safety officers to watch security camera footage to monitor where the African American custodians were. The supervisor had once written up some African American custodians for having lunch in a conference room. Once, during a meeting, the supervisor had told an African American custodian that “he should be the last one to be talking.” Transcript at 18.

(3) On November 13, 2023, the supervisor asked claimant to begin writing a status report each morning on a particular African American custodian. Claimant thought the supervisor’s request was motivated by racial animus. Claimant did not want to be involved in what he viewed as the supervisor’s “vendetta against a certain racial group” and was concerned about the risk of being involved in any potential discrimination lawsuit the custodian might bring. Transcript at 18.

(4) Also on November 13, 2023, claimant was speaking with a male custodian. Both claimant and the custodian had been ill and the two were discussing their similar symptoms. While the two were speaking, the supervisor stated “well, you guys shouldn’t be kissing each other.” Transcript at 6.

Claimant responded that the supervisor's comment was not funny. The supervisor then said, "I meant . . . you shouldn't be drinking out of the same Coke can." Transcript at 8.

(5) Claimant quit working for the employer on November 13, 2023. Claimant decided to quit working for the employer because of the supervisor's request that claimant begin writing a daily status report on the custodian. Claimant also decided to quit because of the supervisor's comment relating to kissing the other employee.

(6) Prior to quitting, claimant did not contact the employer's human resources (H.R.) department to request that the employer address the supervisor's request that claimant begin writing a status report each morning on the African American custodian. If a complaint had been brought to the H.R. department's attention, they would have investigated and taken appropriate action. The H.R. partner who supported the employer's custodians met monthly with the custodial managers, which included claimant. Claimant attended at least some of these monthly meetings. In each of these meetings, the H.R. partner advised that she was available to be contacted with any concerns the custodial managers might have. The employer's website also contained the H.R. department's contact information and provided an online intake form that employees could use to make a complaint.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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). 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.

The order under review concluded that claimant voluntarily left work with good cause. Order No. 24-UI-251054 at 3. In particular, the order concluded that the supervisor's effort to involve claimant in writing daily status reports on the custodian presented claimant with a grave situation, and that raising the matter with the employer's H.R. department would have been futile, and so was not a reasonable alternative to quitting. Order No. 24-UI-251054 at 3. The record does not support this conclusion.

The main reason claimant quit working for the employer was because of his supervisor's request that he begin writing a daily status report on an African American custodian, which claimant believed was motivated by an animus the supervisor had against the custodian based on the custodian's race. At hearing, claimant offered some evidence that had the potential to show racial animus on the part of the supervisor against African American custodians. This included testimony asserting that the supervisor directed the employer's public safety officers to watch security camera footage to monitor where the African American custodians were, and that he had once told an African American custodian that "he should be the last one to be talking." Transcript at 16, 18. If the request for daily status reports on the custodian was part of a scheme to harass or discriminate against the custodian because of the custodian's

race, the supervisor's effort to involve claimant in that scheme would have presented claimant with a grave situation.

However, claimant did not establish good cause to quit based on this reason because he did not pursue the reasonable alternative of reporting to the employer's H.R. department the supervisor's effort to involve him in the scheme of alleged racial discrimination. Had he done so, the record shows that the H.R. department likely would have investigated the matter and taken appropriate action. The record therefore fails to show that pursuing this alternative would have been futile.

The employer's website contained the H.R. department's contact information and provided an online intake form that employees could use to make a complaint. The H.R. partner who supported the employer's custodians met monthly with the custodial managers, which included claimant. In each of these meetings, the H.R. partner advised that she was available to be contacted with any concerns the custodial managers might have. Although claimant may not have been present for all of these meetings during his tenure with the employer, he likely attended some of them and was aware, or should have been aware, that the H.R. department was available to investigate and address allegations of racial discrimination in the workplace. As such, claimant failed to show, that he faced a situation of such gravity that he had no reasonable alternative but to leave work when he did.

Claimant also quit working for the employer because of the supervisor's comment regarding kissing the custodian. The supervisor's comment was inappropriate and arguably amounted to sexual harassment. However, claimant testified at hearing that he "kind of brushed it off," suggesting that the comment was not so oppressive to have presented claimant with a grave situation. Transcript at 10. Even if claimant had faced a grave situation based upon the comment, claimant did not establish good cause to quit because he failed to pursue the reasonable alternative of reporting the supervisor's comment to the H.R. department, which likely would have investigated and taken appropriate action.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective November 12, 2023.

**DECISION:** Order No. 24-UI-251054 is set aside, as outlined above.

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

**DATE of Service:** May 14, 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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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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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