

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0333**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 12, 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 August 27, 2023 (decision # 73408). Claimant filed a timely request for hearing. On March 13, 2024, ALJ Contreras conducted a hearing at which the employer failed to appear, and on March 15, 2024, issued Order No. 24-UI-250216, affirming decision # 73408. On April 2, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Westlund Construction, LLC employed claimant as a construction foreman from approximately September 2021 until approximately September 1, 2023. Claimant supervised a small construction crew and reported directly to the owner of the company.

(2) On several occasions during claimant's tenure with the employer the owner adjusted claimant's timecard via the timekeeping app that the employer used. Each time he adjusted claimant's timecard, the owner removed from the timecard hours that claimant had actually worked, resulting in claimant being paid for less time than he had worked, based on how many hours the owner felt that claimant should have worked. Claimant attempted to address with the owner his concerns about being paid for less time than he worked, but the owner did not change his practice of adjusting claimant's timecard.

(3) Claimant regularly performed additional, off-hours work for the employer, such as picking up lumber, or working extra hours, but the employer typically did not pay claimant for this work.

(4) On several occasions, one of claimant's crew members, "I.J.," refused to follow claimant's instructions to perform a given task. In doing so, I.J. would often use foul language such as telling claimant to "fuck off," and threaten claimant with violence, suggesting that he "was gonna beat [claimant's] ass." Transcript 22. Claimant took I.J.'s threats seriously, as he knew that I.J. had a reputation for regularly getting into fights. On at least two occasions, I.J. engaged in this behavior in front of the owner. However, the owner did not intervene or stop I.J. on these occasions. Claimant also

tried to separately talk to the owner about I.J.'s threats, most recently approximately a week before he quit, but claimant never saw the owner take any action to address the problem.

(5) I.J. and another crew member regularly consumed alcohol while working or came to work while still intoxicated from the previous night. Claimant also witnessed at least one of the crew members use cocaine while on the job. As a result of the crew members working while under the influence of alcohol or drugs, claimant felt unsafe while he was working with them.

(6) On multiple occasions, most recently "a few weeks" before claimant quit, the owner intimated to claimant that "he knew [that claimant] was gonna have sex with [the owner's] wife," and requested that claimant call the owner before claimant proceeded. Transcript at 25, 19. Claimant had no intention of having sex with the owner's wife, and the owner's repeated suggestions that he would do so made claimant uncomfortable.

(7) On or around September 1, 2023, claimant was working by himself on a project at the home of the owner's mother. Claimant planned to work until approximately 2:00 p.m. that day and did so. However, at some point during claimant's shift, the owner notified claimant that he had been watching claimant on camera and, having determined that claimant "wasn't working," decided to clock claimant out at noon. When claimant finished his work at 2:00 p.m. and went to clock himself out, he confirmed that the employer had, in fact, already clocked claimant out at 12:00 p.m., denying claimant two hours' worth of pay for work he had performed that day. Although claimant was angry about the owner having done so, he did not at that time intend to quit. Later that day, the owner stopped at claimant's house to talk to claimant. During the discussion, the owner refused to pay claimant for the additional two hours that claimant worked. As a result, claimant became angry and resigned effective immediately.

(8) Claimant's decision to quit was motivated by the owner's having underpaid claimant on his final day and prior occasions, having repeatedly questioned claimant about having sex with the owner's wife, and having refused to intervene in the crew members' threatening behavior and drug and alcohol use.

**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.

The record shows that claimant voluntarily quit work due to several different factors. Claimant's uncontroverted evidence was that the owner underpaid claimant on several occasions, repeatedly questioned claimant about having sex with the owner's wife, and refused to intervene in the crew members' drug and alcohol use and threatening behavior towards claimant at work. The order under review concluded, however, that claimant quit only because claimant was angry with the owner for

having “clocked him out early that day,” and not “for any other reason.” Order No. 24-UI-250216 at 2. Based on this, the order under review concluded that this did not constitute good cause for quitting because “although [claimant] was angry when he first discovered that the owner had clocked him out early, he did not intend to quit because of the dispute over work time,” but instead later “made the decision to quit in the heat of the moment.” Order No. 24-UI-250216 at 2. The record does not support this conclusion.

First, the record shows that claimant quit due to all of his concerns about his employment, as described above, rather than simply his displeasure over being clocked out early on his last day of work. *See* Transcript at 24, 25. As such, it is necessary to consider each of these factors when determining whether claimant quit for good cause.

To the extent that claimant quit because the owner had been underpaying him (by clocking claimant out before his shift was over or failing to pay claimant for extra work performed), claimant faced a grave situation. No reasonable and prudent person would continue to work for an employer who did not compensate them for work performed.

Similarly, to the extent that claimant quit because of the employer’s repeated suggestion that claimant intended to have sex with the owner’s wife, claimant also faced a grave situation. Irrespective of the owner’s intent in repeatedly raising this issue with claimant, the owner’s comments made claimant uncomfortable, and arguably constituted sexual harassment. No reasonable and prudent person would continue to work for an employer who sexually harassed them or otherwise subjected them to such comments.

Likewise, to the extent that claimant quit due to his issues with the crew members who worked under him, claimant also faced a grave situation. One of the crew members, I.J., regularly used foul language towards claimant, and made threats of violence against claimant which claimant had reason to believe were credible. Additionally, claimant observed I.J. and the other crew member work under the influence of drugs and alcohol, which reasonably caused claimant to fear for his safety. No reasonable and prudent person would continue working for an employer where they faced credible threats of violence perpetrated against them, or had reason to fear for their safety due to other employees working while under the influence of alcohol or drugs.

Finally, regarding all of the above circumstances, claimant had no reasonable alternative but to quit. The record shows that claimant raised concerns about most, if not all, of these issues with the owner on multiple occasions prior to quitting. However, there is no indication in the record that the owner ever took any action to remedy any of these issues. Given that claimant reported directly to the owner, it is unlikely that any other actions beyond quitting would have immediately resolved the issues for claimant.

Note that while the record does not show that claimant sought remedies via government agencies such as the Bureau of Labor and Industries (BOLI), filing a complaint and waiting for its resolution would not have been a reasonable alternative in this situation. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only

remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim). Because claimant's various concerns persisted through his last day of work, they were ongoing and presented a substantial risk of recurrence. Therefore, it would not have been reasonable for claimant to continue working for the employer in the hopes that a complaint filed with, for example, BOLI would have eventually resolved the problems.

Because claimant voluntarily quit work for reasons of such gravity that he had no reasonable alternative but to leave work, claimant voluntarily quit work with good cause, and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 24-UI-250216 is set aside, as outlined above.

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

**DATE of Service:** May 16, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.