

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0407**

*Modified*  
*Late Request for Hearing Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 8, 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 August 27, 2023 (decision # 82857). On December 28, 2023, decision # 82857 became final without claimant having filed a request for hearing.

On January 18, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 29, 2024, issued Order No. 24-UI-246753, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 12, 2024. On February 12, 2024, claimant filed a timely response to the appellant questionnaire. On March 25, 2024, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 24-UI-246753 was vacated and that a hearing would be scheduled to determine whether claimant had good cause for filing the late request for hearing and, if so, the merits of decision # 82857.

On April 11, 2024, ALJ Goodrich conducted a hearing, and on April 19, 2024, issued Order No. 24-UI-252657, allowing claimant's late request for hearing and affirming decision # 82857 on the merits. On April 27, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-252657 allowing claimant's late request for hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-252657 is **adopted**. The rest of this decision addresses the merits of decision # 82857.

**FINDINGS OF FACT:** (1) Wild River Pizza and Brewing Co. employed claimant as a server from January 25, 2022, until September 2, 2023. Claimant worked approximately 30 hours per week and was paid \$14.20 per hour.

(2) On August 19, 2023, claimant was offered a full-time job with another employer paying \$21.00 per hour, to begin September 5, 2023. When interviewing for this job, claimant was told that a background check would be conducted. Claimant told the interviewer, who later offered her the job, the specifics of her criminal history and the interviewer replied that “it wouldn’t be a problem.” Transcript at 25. Based on this representation, claimant did not believe that the job offer had any contingencies. Claimant immediately accepted the offer.

(3) Later on August 19, 2023, claimant notified the employer that she was resigning, effective September 2, 2023, to begin the new job. The employer and some of claimant’s managers and co-workers were unhappy with her decision to quit, and claimant felt that they thereafter made working there difficult, in part by demonstrating poor attitudes toward her.

(4) On September 1, 2023, claimant was notified that the job offer was rescinded. Claimant had been scheduled to work for the employer that day and the following day, but claimant and her child were ill, and claimant did not go to work either day. Claimant asked a manager if she could make those days up after September 2, 2023, but was not permitted to do so. The employer was unhappy with claimant having missed her last two scheduled days of work.

(5) Claimant did not inform the employer that her job offer had been rescinded and did not attempt to rescind her resignation. She did not work for the employer after September 2, 2023. The employer had hired a replacement for claimant and was in the process of training the replacement on that date. The employer would not have allowed claimant to rescind her resignation if she attempted to do so on or before September 2, 2023.

(6) On September 3 or 4, 2023, claimant asked a manager if he could put her back on the schedule and he gave a non-committal response. Later that month, claimant spoke with him again and learned that the employer declined to put her back on the schedule.

**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.

A claimant who leaves work to accept an offer of other work “has left work with good cause only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay [either] an amount equal to or in excess of the weekly benefit amount; or an amount greater than the work left.” OAR 471-030-0038(5)(a).

Claimant resigned from her job with the employer to accept an offer of other work. The order under review concluded that claimant did not have good cause for leaving work based on the acceptance of an offered new job because that offer was rescinded before claimant separated from the employer. Order No. 24-UI-252657 at 5. The record does not support this conclusion.

Generally, the relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date. *Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017). However, where the employer did not agree to allow the employee to rescind notice of their intent to resign, the circumstances at the time the notice is given is relevant, as the decision to quit work was voluntary only at that time.

The employer's witness testified that had claimant requested to rescind her resignation on September 1 or 2, 2023 after learning that her new job offer had been rescinded, they "would have considered keeping her on[.]" Transcript at 37. Other circumstantial evidence suggests that although they may have considered allowing claimant to rescind her resignation, more likely than not, the employer would not have allowed her to do so. Claimant testified, "They treated me very poorly when they found out I was leaving. Their attitudes all changed. . . That last week or two that I was there was awful." Transcript at 26. The employer did not allow claimant to make up the two shifts she missed due to illness on September 1 and 2, 2023, despite her request to do so. Additionally, the employer had already hired claimant's replacement and was in the process of training her on September 2, 2023. Claimant testified that on September 3 or 4, 2023, after the work separation, she requested to be put back on the schedule but did not receive a definite response until later that month, when she was told the employer would not put her back on the schedule.<sup>1</sup> It can reasonably be inferred from the totality of these circumstances that the employer was not willing to allow claimant to continue working for them after September 2, 2023 and therefore, more likely than not, would not have allowed her to rescind her resignation had she asked. Therefore, the circumstances that caused claimant to give notice of her resignation on August 19, 2023, are properly considered in determining good cause.

Claimant resigned on August 19, 2023, to accept an offer of other work. The other work was to begin the first business day after claimant's last scheduled shift with the employer, and therefore in shortest length of time as can be deemed reasonable under the circumstances.<sup>2</sup> The work was full-time and paid \$21.00 per hour, and therefore paid more than claimant's part-time work for the employer at \$14.20 per hour. The record does not suggest that the work was of limited duration or would not continue indefinitely. Therefore, under OAR 471-030-0038(5)(a), whether claimant had good cause to resign her position with the employer for this offer of new work turns on whether the offer was "definite."

The record is ambiguous as to the reason the offer of new work was rescinded. Claimant denied that any contingencies such as a drug test or credit check were part of the offer. Transcript at 24-25. Claimant testified that she was told that a background check would be conducted as part of the hiring process, but that in the interview she "was extremely open and honest about [her] past" and was "very honest and upfront" about her recovery from drug addiction and "all that." Transcript at 25. Claimant further

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<sup>1</sup> Claimant's first-hand account of this interaction is entitled to greater weight than the account of the employer's witness, who relied on hearsay from the manager at issue in forming her belief that claimant had not requested to be put back on the schedule until later in September. The facts have therefore been found in accordance with claimant's account as to this issue.

<sup>2</sup> Tuesday, September 5, 2023 immediately followed Labor Day, a state and federal holiday.

testified that the interviewer “looked me in my eyes and said that it wouldn’t be a problem.” Transcript at 25. The interviewer’s statement to claimant suggests that when the job offer was made, it was not contingent on the findings of the background check, as the interviewer was aware of what the check would reveal and found claimant’s background acceptable. It is also possible that the background check had been conducted prior to the offer being made. Therefore, it is reasonable to infer that the job offer was rescinded for reasons other than the results of the background check. Accordingly, the lack of contingencies rendered the offer “definite” despite the offer later being rescinded for reasons not explained in the record and perhaps beyond the parties’ knowledge. Therefore, pursuant to OAR 471-030-0038(5)(a), claimant has shown that she left work for an offer of new work and did so with good cause.

For these 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-252657 is set aside, as outlined above.

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

**DATE of Service:** June 5, 2024

**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.

**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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# 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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