

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0439**

*Modified*  
*Request to Reopen Allowed ~ No Disqualification*

*La Orden Judicial es Modificada*  
*La Aplicación Para Reabrir la Audiencia Es Permitida ~ No Descalificación de Beneficios*

*Esta decisión está de acuerdo con la reapertura de la audiencia y, además, concluye que la reclamante tenía una buena causa para dejar el trabajo y no está descalificada para recibir beneficios debido a esta separación de trabajo. Partes de esta decisión están traducidas al español. Sin embargo, hay información importante en esta decisión que aparece solo en inglés con respecto a por qué la Junta de Apelaciones de Empleo (EAB, por sus siglas en inglés) determinó que la reclamante tenía una buena causa para dejar el trabajo y no está descalificada para recibir beneficios. Si necesita interpretación en español de la parte de esta decisión que aparece en inglés, puede obtenerla llamando a la EAB al 503-278-2077 y solicitando un intérprete de español.<sup>1</sup>*

**PROCEDURAL HISTORY:** On December 7, 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 September 10, 2023 (decision # 120943). Claimant filed a timely request for hearing. On December 26, 2023, notice was mailed to the parties that a hearing was scheduled for January 9, 2024. On January 9, 2024, claimant failed to appear for the hearing, and ALJ Fraser issued Order No. 24-UI-245044, dismissing claimant's request for hearing due to her failure to appear. On January 19, 2024, claimant filed a timely request to reopen the January 9, 2024, hearing. On March 27, 2024, and continuing on April 26, 2024, ALJ Fraser conducted a hearing, interpreted in Spanish, and on April 26,

<sup>1</sup> This decision concludes that claimant's request to reopen is allowed and claimant voluntarily quit work with good cause. Portions of this decision are translated into Spanish. However, there is important information in this decision that appears only in English regarding why the Employment Appeals Board (EAB) determined that claimant had good cause to reopen the January 9, 2024, hearing, and voluntarily quit work with good cause. If you require Spanish interpretation of the portion of this decision that appears in English, you can obtain that by calling EAB at 503-278-2077 and requesting a Spanish interpreter.

2024, issued Order No. 24-UI-253041, allowing claimant's request to reopen the January 9, 2024 hearing, canceling Order No. 24-UI-245044, and affirming decision # 120943 on the merits. On May 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL DEL CASO:** *El 7 de diciembre de 2023, el Departamento de Empleo de Oregón (el Departamento) mandó por correo una decisión administrativa que concluye que la reclamante renunció voluntariamente al trabajo sin causa justificada y, por lo tanto, fue descalificada para recibir beneficios del seguro de desempleo a partir del 10 de septiembre de 2023 (decisión # 120943). La reclamante presentó una solicitud de audiencia oportuna. El 26 de diciembre de 2023, se envió por correo a las partes un aviso de que se programó una audiencia para el 9 de enero de 2024. El 9 de enero de 2024, la reclamante no se presentó a la audiencia y el juez administrativo Fraser emitió la Orden No. 24-UI-245044, desestimando la solicitud de audiencia de la reclamante debido a su falta de presentarse en la audiencia. El 19 de enero de 2024, la reclamante presentó una solicitud oportuna para reabrir la audiencia del 9 de enero de 2024. El 27 de marzo y el 26 de abril de 2024, el juez administrativo Fraser llevó a cabo una audiencia, interpretada en español, y el 26 de abril de 2024 emitió la Orden No. 24-UI-253041, permitiendo la solicitud de la reclamante de reabrir la audiencia del 9 de enero de 2024, cancelando la Orden No. 24-UI-245044, y afirmando la decisión # 120943 que negaba los beneficios. El 9 de mayo de 2024, la reclamante presentó una solicitud de revisión de la Orden No. 24-UI-253041 ante la Junta de Apelaciones de Empleo (EAB).*

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-253041 concluding that claimant had good cause to reopen the January 9, 2024, hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-253041 is **adopted**. The rest of this decision addresses the merits of decision # 120943.

*EAB consideró todo el registro de la audiencia. EAB está de acuerdo con la parte de la Orden No. 24-UI-253041 concluyendo que la reclamante tenía una buena causa para reabrir la audiencia del 9 de enero de 2024. De conformidad con ORS 657.275(2), esa parte de la Orden No. 24-UI-253041 es **adoptada**.*

**FINDINGS OF FACT:** (1) Milton Freewater Unified School District employed claimant as a custodian from June 6, 2021, until September 11, 2023.

(2) Claimant's supervisor frequently criticized claimant's work, yelled at her in a "really aggressive" manner in front of people, accused her of stealing tomatoes from the school garden, threatened to have her deported, and put his hands near her chest as he passed by her as if he intended to touch her. March 27, 2024, Transcript at 10. This made claimant feel "really uncomfortable" at work, and on at least one occasion "made [her] cry." Transcript at 10, 12. When claimant stated that she would complain to the employer, the supervisor would state, "You know, do whatever you want." March 27, 2024, Transcript at 11.

(3) On September 7, 2023, claimant's supervisor directed her to perform work outside in direct sunlight. Claimant requested time to obtain additional clothing for sun protection, but the supervisor refused to allow her to do so and yelled at her to go outside without the protective clothing. That day, claimant reported this incident and the supervisor's ongoing treatment of her to the employer's human resources department.

(4) On September 11, 2023, a meeting was held for the purpose of mediation between claimant and the supervisor. Claimant and the supervisor were present. Although claimant does not speak English, she was not provided an interpreter and was not permitted to bring her bilingual son to the meeting to interpret for her. Claimant reiterated her complaints regarding the supervisor and requested to be transferred to another of the employer's schools where she would never have to work with or for this supervisor.

(5) The employer offered claimant the possibility of such a transfer if a position opened in the future, but there were no such vacancies or planned vacancies at that time. The employer offered to immediately adjust claimant's shift to a few hours later in the day to reduce claimant's contact with the supervisor, but claimant believed that her work would still be scrutinized by the supervisor after her shift and that she would have to work with him at times when school was not in session. The employer also suggested that claimant use her accrued sick and vacation leave to temporarily avoid the supervisor with the hope that a transfer opportunity might come available before the leave was exhausted. Claimant felt that she should not have to use her accrued leave to avoid being harassed by her supervisor, and rejected the employer's proposed remedies to her complaints because they did not involve immediately and permanently separating her from the supervisor. Claimant stated that she would not return to work without such a remedy in place. The employer told claimant that "if she was not going to come to work, she would need to resign and go on the [substitute] list." April 26, 2024, Transcript at 13. Claimant told the employer that she was resigning and submitted a letter of resignation the following day. Claimant did not work for the employer after September 11, 2023.

(6) After claimant's separation from the employer, the employer hired a replacement who registered complaints against the supervisor "[f]or similar reasons as to what [claimant] stated," and eventually was granted a transfer to work at a different school for that reason.

**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 her supervisor's ongoing harassment and mistreatment of her. The order under review concluded that this was a grave situation, which is supported by the record. Order No. 24-UI-253041 at 5. However, the order concluded that claimant had the reasonable alternative of attempting a modified work schedule, starting work a few hours later, "to see if this accommodation would keep the supervisor away from her" as she awaited a potential vacancy at another school to which she could possibly transfer. Order No. 24-UI-253041 at 5-6. The record does not support that this was a reasonable alternative, or that other reasonable alternatives were available.

Claimant faced a grave situation because of her supervisor's ongoing mistreatment of her. Claimant testified that the supervisor frequently criticized her work, yelled at her in a "really aggressive" manner in front of people, accused her of stealing, threatened to have her deported, put his hands near her chest as he passed by her as if he intended to touch her, and on September 7, 2023, denied her time to put on protective clothing before directing her to work for an extended period in the sun. March 27, 2023 Transcript at 7-11. The employer did not rebut this testimony, and testified that claimant's replacement was granted a transfer after making similar complaints about the supervisor. After hearing claimant's complaints, the employer's proposed remedies did not guarantee immediate, permanent, and complete separation from the supervisor, as discussed in greater detail below. No reasonable and prudent person would have continued to work for their employer for an additional period of time under these circumstances.

Further, claimant did not have a reasonable alternative to leaving work. The severity and pervasiveness of the supervisor's mistreatment of claimant made it reasonable for claimant to require that any alternative to quitting offered by the employer result in complete separation from the supervisor. A paid or unpaid leave of absence was not certain, or perhaps even likely, to end with a transfer. The employer did not know whether a transfer opportunity would be available to claimant at or before the time she exhausted such leave. Further, claimant testified that modifying her shift to start a few hours later would not have completely separated claimant from the supervisor, as she testified that "it would have ended up being the same thing. During vacation times or holidays we would, either way, end up working together." April 26, 2024 Transcript at 18-19. Claimant also testified that she believed that the supervisor "would be checking my work, and he was not in agreement with anything I did, so he would be checking that the next day." April 26, 2024 Transcript at 15. This implied that the supervisor, directly or indirectly, would still have been able to control or discuss claimant's work, and therefore he would have retained the opportunity to continue his mistreatment or harassment in some form. The employer did not rebut claimant's testimony regarding these beliefs. Therefore, this alternative was not reasonable because it did not sufficiently separate claimant and the supervisor.

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-253041 is modified, as outlined above. *La Orden de la Audiencia 24-UI-253041 se modifica, de acuerdo a lo indicado arriba.*

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

**DATE of Service:** June 24, 2024

**FECHA de Servicio:** 24 de junio de 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.

***NOTA:** Esta decisión revoca una orden judicial que negó beneficios. Por favor tenga en cuenta que, si le deben beneficios, el Departamento puede tomar aproximadamente una semana para pagar esos beneficios.*

**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.

**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.

***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](https://courts.oregon.gov). En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



# 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 الاستئناف 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، می توانید 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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[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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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.