

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0526**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 2, 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 December 24, 2023 (decision # L0003426660).<sup>1</sup> Claimant filed a timely request for hearing. On June 10, 2024, ALJ Sachet-Rung conducted a hearing, and on June 14, 2024, issued Order No. 24-UI-256612, reversing decision # L0003426660 by concluding that claimant voluntarily quit work with good cause and therefore was not disqualified from receiving benefits based on the work separation. On July 2, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant and the employer both filed written arguments. EAB considered the employer's written argument when reaching this decision. EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

The employer framed their written argument as a "Request to Re-open the Hearing," requesting as such based on their assertion that the exhibit they attempted to submit into evidence should have been admitted at hearing. Employer's Written Argument at 2-3. As a preliminary matter, the procedural rules

<sup>1</sup> Decision # L0003426660 failed to indicate the effective date of disqualification, apparently due to an error. However, as the decision concluded that claimant had separated from work on December 29, 2023, it can be inferred that the Department intended the disqualification to begin on the first day of the week in which the separation occurred, which was Sunday, December 24, 2023.

governing administrative hearings for unemployment insurance benefits cases do not permit a reopening of the hearing in such circumstances. OAR 471-040-0040 (February 10, 2012) states, in relevant part:

(1) After service of an administrative law judge's written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

- (a) Requesting the reopening failed to appear at the hearing;
- (b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and
- (c) Has good cause for failing to appear at the hearing.

Thus, EAB cannot grant the employer's request to "reopen" the hearing because the employer appeared at the hearing and "reopen" requests are determined by the Office of Administrative Hearings.

This procedural issue aside, the ALJ did not err in failing to admit the exhibit into evidence, in part because the exhibit discussed in the employer's written argument does not appear to have actually been the exhibit offered into evidence, whatever the employer's attempts to do so. Prior to the hearing, the ALJ noted that there was "an attempt to submit a document" consisting of "the settlement agreement and release," and the employer's representative confirmed that she was the party who attempted to submit that document into evidence. Audio Record at 4:25 to 5:02. The ALJ then stated that she was "having trouble" viewing the document and therefore could not mark it as an exhibit or admit it into evidence, and explained to the employer's representative that the latter could testify to the contents of the document. Audio Record at 5:04 to 5:25. A review of the Office of Administrative Hearings (OAH)'s records on this matter shows an entry for a document entitled "Settlement Agreement & Release from Employer," but no corresponding document in OAH's system was actually uploaded. Thus, the employer more likely than not failed to actually offer the document into evidence.

The employer's witness did not raise an objection or request that the ALJ either reschedule the hearing or hold the record open for submission of the document. Further, the employer's representative, testifying on the employer's behalf, testified as to what appeared to be the relevant provisions of the document (the settlement agreement) during the hearing. Audio Record at 24:07 to 24:55. In their written argument, the employer did not describe the contents of the proposed exhibit in further detail or attempt to add additional information to the record. Given this lack of new information, the employer's failure to request that the ALJ continue the hearing or hold the record open to submit the proposed exhibit, and the fact that the employer's witness testified to the contents of the proposed exhibit during the hearing, the employer has not shown either that the ALJ erred in failing to admit the proposed exhibit or that they were prejudiced by its exclusion from the record. As such, to the extent that the employer's request in their written argument was intended as a request to reopen the record, the request is denied. If the employer believes that additional information in the proposed exhibit, not already in the record, is relevant and material to the outcome in this matter, they may file a request for reconsideration of this decision in accordance with OAR 471-041-0145 (May 13, 2019).

**FINDINGS OF FACT:** (1) Werner Gourmet Meat Snacks, Inc. employed claimant as a sales manager from February 3, 2014, until December 29, 2023.

(2) On or around May 26, 2023, claimant called the employer's main office. A customer service representative initially answered the phone, and then transferred claimant to the owner of the company. Both people to whom claimant spoke told the employer's human resources (HR) department that claimant sounded disoriented on the phone and they were concerned about his health. HR subsequently contacted claimant about this concern and asked him to visit a doctor to be certified as fit for duty.

(3) Claimant responded to HR by alleging that the request amounted to age-based discrimination. Additionally, claimant asserted that both his previous and then-current supervisors had made harassing or discriminatory comments towards him. The employer investigated these matters and found that while claimant's claims against the previous supervisor were founded, the claims against claimant's then-current supervisor were not substantiated. The employer disciplined the previous supervisor based on their findings. Thereafter, claimant submitted a certification from his physician stating that he was fit for duty.

(4) In or around June 2023, after the employer's investigation concluded and claimant was certified as fit for duty, the employer received a notification that claimant filed an age-discrimination complaint against them with the Equal Employment Opportunity Commission (EEOC). Claimant's counsel contacted the employer seeking a settlement of the matter. The parties entered into mediation, and the parties ultimately reached a settlement agreement. The terms of the agreement included a \$45,000 payout to claimant, and allowed claimant to work for the remainder of 2023 at his regular rate of pay, at which point his employment would end. On December 29, 2023, claimant voluntarily quit work per the terms of the settlement agreement.

(5) The employer had not planned on discharging claimant, and claimant would have been allowed to continue working for the employer if not for the terms of the settlement agreement.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with good cause.

**Nature of the work separation.** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant separated from employment per the terms of a settlement agreement he signed in or around June 2023 which allowed him to continue working for the employer for the remainder of the calendar year. There is no indication in the record that claimant, having accepted those terms (including the \$45,000 payout) would have been allowed to continue working for the employer beyond the agreed-upon separation date of December 29, 2023. Because claimant and the employer negotiated and reached an agreement on claimant's separation date, the nature of the work separation is a voluntary quit. *See also Smith v. Employment Division*, 34 Or App 623, 579 P2d 310 (1978) ("where the employer and the employee have 'agreed upon a mutually acceptable date on which employment would terminate,' the termination should be treated as a 'voluntary leaving' and not as a discharge"); *see also J.R. Simplot Co. v. Employment Division*, 102 Or App 523, 795 P2d 579 (1990); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982).

**Voluntary quit.** 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). “[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 he was required to do so per the terms of the settlement agreement he reached with the employer after he filed an EEOC complaint against them. Having accepted the terms of that agreement, which included a substantial cash payout, there is no indication in the record that claimant could have unilaterally rescinded those settlement terms in order to continue working. A reasonable and prudent person, faced with terms of an agreement that required them to resign at a certain point in time, would not continue to work for their employer beyond the agreed-upon date when doing so would likely cause them to breach a legally binding agreement. As such, the terms of the settlement agreement, requiring claimant to quit on December 29, 2023, constituted circumstances of such gravity that claimant had no reasonable alternative but to leave work. Claimant therefore 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-256612 is affirmed.

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

**DATE of Service:** July 30, 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.

**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 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، 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.