

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0564**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 19, 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 August 13, 2023 (decision # 110841). Claimant filed a timely request for hearing. On February 28, 2024, ALJ Christon conducted a hearing, and on March 4, 2024, issued Order No. 24-UI-249402, affirming decision # 110841. On March 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB). On May 6, 2024, EAB issued EAB Decision 2024-EAB-0296, reversing Order No. 24-UI-249402 and remanding the matter for further proceedings. On July 9, 2024, ALJ Christon conducted a hearing, and on July 15, 2024, issued Order No. 24-UI-259088, affirming decision # 110841. On July 26, 2024, claimant filed an application for review of Order No. 24-UI-259088 with EAB.

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Bay Equity Northwest employed claimant as a loan officer assistant from March 27 to August 18, 2023. Bay Equity Northwest paid claimant, on average, \$6,916 per month, which was derived from a base salary of \$6,041 per month plus a bonus of \$125 per loan filed each month. Claimant averaged seven loans filed per month.

(2) Prior to August 1, 2023, a mortgage company called Secured Processing expressed interest in offering claimant a job as a loan processor. To offer the job to claimant, Secured Processing required claimant to pass a background check. In the week before August 1, 2023, claimant submitted to the background check.

(3) Claimant had a preplanned, week-long vacation in Canada with her daughter scheduled for the week beginning August 20, 2023, which was the week before her daughter's school began.

(4) On August 1, 2023, claimant successfully passed the background check and Secured Processing offered claimant the job. Claimant accepted Secured Processing's job offer the same day. Because claimant wished to give Bay Equity Northwest two weeks' notice and had the preplanned, week-long vacation with her daughter scheduled for the week beginning August 20, 2023, Secured Processing scheduled claimant's job to begin on August 28, 2023. On August 1, 2023, claimant gave the employer Bay Equity Northwest notice of her intent to resign effective August 15, 2023. Claimant's manager asked that claimant stay until August 18, 2023, because she needed claimant's help. Claimant agreed to do so and changed her resignation date to be effective August 18, 2023.

(5) At the time Secured Processing offered the job to claimant, claimant "was told it was contract, and that was basically it[.]" February 28, 2024, Transcript at 11-12. Secured Processing "told [claimant] how the pay would work" including that claimant would get paid on Friday of each week based on the contracts that had closed by Wednesday of each week. February 28, 2024, Transcript at 22. The amount of claimant's pay was based on "what the . . . contract amount was per file[.]" February 28, 2024, Transcript at 14.

(6) Claimant believed the Secured Processing job had the "potential" to pay \$10,000 or more per month. February 28, 2024, Transcript at 7. Claimant had worked in the mortgage industry for a long time, had previously been a processor, and believed earning "\$10,000 plus" was "the income potential of what [she] was used to making as a processor." February 28, 2024, Transcript at 11. However, Secured Processing did not offer claimant a guarantee of earnings. Claimant had been referred to Secured Processing by a group of loan officers who worked for Secured Processing and with whom claimant had worked previously, and some of those individuals told claimant they earned "more than \$10,000 plus" at Secured Processing. February 28, 2024, Transcript at 13. However, those individuals were loan officers whereas claimant was to be a processor, a role that supports loan officers and their clients. Claimant did not speak to any processors at Secured Processing before accepting the job. Claimant concluded that she would have the potential to earn \$10,000 or more per month with Secured Processing after she "kinda estimated, based on what [she] was told," and on "what the . . . contract amount was per file as well." February 28, 2024, Transcript at 14.

(7) Claimant believed that the Secured Processing job was "contract work" that would "give [her] more flexibility," and in which she would be "working for [her]self basically." February 28, 2024, Transcript at 11, 22. The job would be performed in an online environment, working from home via claimant's own computer using Secured Processing's software, with an email account provided by Gmail, and with the processing manager available to help by teleconference. The processing manager would be available if claimant had questions and to help market claimant by making statements to others such as "hey[,] I have a great processor . . . you should give her a try[.]" February 28, 2024, Transcript at 28. Claimant did not receive any tax documents from Secured Processing but believed she was in a "1099" relationship with them. At Secured Processing's suggestion, claimant hired an assistant, whom claimant interviewed and selected herself. Secured Processing did not provide claimant any healthcare or retirement benefits. Claimant did not establish a business entity with the Secretary of State to take the Secured Processing job, she made no investment in order to perform the work, she did not get insurance

or indemnify Secured Processing against loss, and she was not permitted to perform services for other mortgage companies while performing the job for Secured Processing.

(8) On August 28, 2023, claimant began the job with Secured Processing. Claimant underwent a two-week, unpaid training that began that day. At the end of the unpaid training, claimant stopped performing the job for Secured Processing because she received an offer of work from a different entity, Rivermark Credit Union. Because claimant's tenure with Secured Processing consisted entirely of the two-week, unpaid training, claimant was never actually paid anything by Secured Processing.

(9) In October 2023, Rivermark Credit Union terminated claimant's employment, and claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant had a monetarily valid claim with a weekly benefit amount of \$812, which was equivalent to \$3,518.67 per month.

**CONCLUSIONS AND REASONS:** Claimant quit 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.

Claimant quit working for the employer to accept an offer of other work with Secured Processing. While claimant believed at the time she quit work that she would be in an independent contractor relationship with Secured Processing, and therefore would be quitting to engage in self-employment, the record shows that Secured Processing and claimant had an employer-employee relationship.

Under OAR 471-030-0038(5)(b)(G), leaving work without good cause includes "[l]eaving work for self employment." Claimant thought she would be "working for [her]self" and that the job would "give [her] more flexibility." February 28, 2024, Transcript at 11, 22. The job would occur in an online environment, in which claimant would use her own computer to perform the services, with a processing manager available to help answer questions and to "market" claimant. February 28, 2024, Transcript at 28. To help with the Secured Processing job, claimant hired an assistant whom she interviewed and selected herself. Claimant believed she was in a "1099" relationship with Secured Processing and Secured Processing did not provide claimant any healthcare or retirement benefits. February 28, 2024, Transcript at 7, 22. Because of claimant's contention that she believed her work with Secured Processing would be as an independent contractor, the nature of the employment relationship must be analyzed. Guidance indicates that the Department interprets an individual to be self-employed for purposes of OAR 471-030-0038(5)(b)(G) if they are an independent contractor. UI Benefit Manual § 443 (Rev. 04/01/10) ("Anyone who leaves work to enter into or pursue work as an independent contractor (self-employment) has left work without good cause").

Per ORS 657.040(1), a person is an independent contractor if they meet the definition of that term as defined in ORS 670.600. ORS 670.600(2) defines “independent contractor” as follows:

As used in ORS [chapter] \* \* \* 657 \* \* \*, “independent contractor” means a person who provides services for remuneration and who, in the provision of the services:

- (a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
- (b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;
- (c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and
- (d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

As to the independently established business element set forth by ORS 670.600(2)(b), per ORS 670.600(3), a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

- (a) The person maintains a business location:
  - (A) That is separate from the business or work location of the person for whom the services are provided; or
  - (B) That is in a portion of the person’s residence and that portion is used primarily for the business.
- (b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:
  - (A) The person enters into fixed-price contracts;
  - (B) The person is required to correct defective work;
  - (C) The person warrants the services provided; or
  - (D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.
- (c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or

other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) The person makes a significant investment in the business, through means such as:

(A) Purchasing tools or equipment necessary to provide the services;

(B) Paying for the premises or facilities where the services are provided; or

(C) Paying for licenses, certificates or specialized training required to provide the services.

(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

The record shows that claimant was not engaged in an “independently established business,” and therefore was not an independent contractor. Regarding requirement (a), claimant worked from home, and may therefore have satisfied this requirement. As to requirement (b), claimant denied that she assumed any risk of loss from her work activities, and therefore this requirement would not have been met. February 28, 2024, Transcript at 27. As to requirement (c), claimant testified that she was prohibited from providing mortgage processing services for anyone but Secured Processing, and therefore this requirement would not have been met. February 28, 2024, Transcript at 27. As to requirement (d), the record does not suggest that claimant made any investment in order to perform her work with Secured Processing, and therefore this requirement would not have been met. As to requirement (e), claimant was allowed to hire an assistant who would have been paid out of claimant’s commission earnings by Secured Processing, which may have satisfied this requirement. However, as less than three of the five listed requirements could potentially have been met, claimant would not have been considered an independent contractor under applicable law, and would therefore not have been self-employed.

In addition, the Department offered testimony, consistent with this analysis, of a representative who specialized in auditing employer compliance with required contributions to the unemployment insurance program and classification of workers as employees or independent contractors. Her opinion, after reviewing evidence of Secured Processing’s operations generally, and claimant’s relationship with them specifically, was that the relationship here was consistent with that of employer-employee rather than an independent contractor. *See* July 9, 2024, Transcript at 7. Accordingly, claimant did not quit working for the employer to engage in self-employment; she quit to accept an offer of other work.

**Leaving Work to Accept an Offer of Other Work.** 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). In pertinent part, the Department does not consider a job offer to be definite “if [it] is contingent upon . . . [such things as] passing a drug test, background check, credit check, and/or an

employer receiving a contract.” Oregon Employment Department, UI Benefit Manual § 442 (Rev. 04/01/10).

As to whether the Secured Processing job offer was definite, there were no unfulfilled contingencies at the time claimant quit working for Bay Equity Northwest. Secured Processing required claimant to pass a background check, but claimant successfully did so as of August 1, 2023. Moreover, there is no indication from the record that the work would not have continued indefinitely.

Further, the work was to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Claimant accepted the Secured Processing job on August 1, 2023. However, she could not begin the job during her resignation notice period, which, at the request of her manager, claimant agreed to extend from August 15, 2023, to August 18, 2023. From there, claimant had a preplanned, week-long vacation with her daughter scheduled for the week beginning August 20, 2023. Typically, where a claimant takes time between the old and new work not out of necessity, it cannot be said that the work is to begin in the shortest length of time reasonable under the circumstances. Here, however, given that the vacation with her daughter was preplanned and scheduled to occur the week before the daughter went back to school, the record supports an inference that claimant had incurred costs that could not be refunded and that the daughter’s school obligations made rescheduling the vacation difficult or impossible. Under those circumstances, arranging the Secured Processing job to begin after the vacation was reasonable, and claimant therefore met the element requiring the work to begin in the shortest length of time reasonable under the circumstances.

The analysis therefore turns on whether the Secured Processing job would have paid either an amount equal to or in excess of the weekly benefit amount, or an amount greater than the work left. Claimant’s weekly benefit amount is \$812, which was lower than her base salary from the employer of \$6,041. Therefore, claimant must show that her work for Secured Processing would have paid at least \$812 per week. Claimant’s compensation would have been entirely commission-based, and therefore her earnings would necessarily depend on the amount of work made available to her. Claimant testified that in the months leading up to the August 2023 job offer, she was aware that the mortgage industry “was starting to slow down.” February 28, 2024, Transcript at 50. However, she still “hope[d]” that there would be at least 24 loan files for her to work on each month, resulting in earnings of at least \$10,000. February 28, 2024, Transcript at 37. When claimant started working, however, she was “only seeing two or three [available files] and other people are getting [them] before I am.” February 28, 2024, Transcript at 36.

The record therefore shows only that claimant knew the job *might* pay \$812 or more per week in commissions, not that the job *would* pay at least that amount, when she accepted it. Given that claimant’s earning ability would have depended upon the employer’s provision of loan files, a factor beyond claimant’s control, and that there was no guarantee regarding minimum earnings or even a minimum number of files for her to work on, it is no more than equally likely that claimant would have earned at least \$812 as it is that she should have earned less than \$812 per week. Therefore, claimant has not met her burden of showing that the Secured Processing job would, more likely than not, have paid at least \$812 per week. Accordingly, claimant voluntarily left work to accept an offer of other work, and under OAR 471-030-0038(5)(a), did so without good cause.

For these reasons, claimant quit work without good cause and is disqualified from receiving unemployment insurance benefits effective August 13, 2023.

**DECISION:** Order No. 24-UI-259088 is affirmed.

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

**DATE of Service:** August 21, 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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# 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 desisyong ito.

## 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)

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