

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0685**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 12, 2024 (decision # L0004329055). Claimant filed a timely request for hearing. On August 26, 2024, ALJ Chiller conducted a hearing, and on September 3, 2024, issued Order No. 24-UI-264623, modifying decision # L0004329055 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 5, 2024. On September 23, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party 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) HCSG West, LLC employed claimant as a certified dietary manager at a nursing home facility from January 15, 2024, until May 10, 2024.

(2) Claimant began working at the nursing home facility in 2013. Over claimant's tenure at the nursing home, the facility was owned and operated by multiple entities: first, by an entity called Pinnacle Health Care, and then by a company called Avalon Health Care. In 2023, a company called Volare Health Care took ownership of the facility. Throughout each of these transitions, claimant remained working at the same facility in the same dietary manager role, but in different consecutive employment relationships. After Volare acquired the nursing home, they managed dining services in-house for a time but then "outsourc[ed]" or contracted with the employer for it to manage the facility's dining services beginning January 15, 2024. Transcript at 6.

(3) Within a few years of when claimant began working at the nursing home facility in 2013, the facility experienced staffing shortages. The staffing shortages often caused claimant to cover shifts and work long hours. It also interfered with claimant's ability to take vacation time for as long as she desired, or to take a vacation without having to spend some of her vacation time working.

(4) In or around 2021, claimant's daughter had shoulder surgery and claimant was not able to be with her daughter during it because she was covering shifts. In 2023, staffing shortages caused claimant to be unable to take off as much time as she desired for her daughter's wedding, although she was able to get two days off and did not miss the ceremony. Claimant took a vacation in late December 2023, and took five days off on this occasion. However, claimant had her computer with her during the vacation, and was taking calls and texts about work and placing food orders during the days off.

(5) Volare's outsourcing of the facility's dining services to the employer HCSG West, LLC was effective January 15, 2024, at which time claimant, who had been the existing dietary manager under Volare, began working for the employer in the same position. Under the outsourcing arrangement, Volare remained the employer of the rank-and-file dining workers but managers, like claimant and her supervisor, were employed by the employer.

(6) Claimant disapproved of the way the employer handled the transition of dining services from Volare. One change that claimant did not like was that, previously, claimant had used a single wholesaler to order food for the facility but under the employer, bread, milk, and vegetables were ordered from different wholesalers and, sometimes, claimant had to buy items from the supermarket. Also, the employer had not set up a new food order guide for the facility, which increased the time it took claimant to place a food order.

(7) Claimant believed that, after the transition, she remained limited in her ability to take as much vacation time as she desired. Claimant could typically take no more than five days off for vacation at a time. Claimant believed that her manager had told her that if she wanted to take a vacation, she had to "find [her] own coverage," by, for example, arranging for a dietary manager from a sister facility to cover her shifts, something claimant could accomplish "very rarely." Transcript at 13-15. However, claimant was unfamiliar with the employer's policy governing vacation requests. She thought the policy was probably contained in the employer's employee handbook, but had never read the handbook.

(8) Claimant's manager had not told claimant that in order to take a vacation, she had to find her own coverage.<sup>1</sup> The employer's policy called for claimant to request time off 30 days in advance, and upon such request, the employer would put a plan in place to cover the facility during claimant's time off.

(9) In April 2024, claimant took five days off work "for a wom[e]n's trip" that several employees at the nursing home participated in. Transcript at 27. Claimant requested the time off from Volare's nursing home administrator and notified the employer of the time off two days before the trip. The days off

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<sup>1</sup> At hearing, claimant testified that her manager had told her that she "had to find [her] own coverage if [she] wanted to take a vacation." Transcript at 13. The manager testified that she never told claimant that, and that the employer's policy required claimant to request time off 30 days in advance and upon such request the employer would put a plan in place to cover the facility during the time off. Transcript at 32, 27. As these accounts are no more than equally balanced, and given that claimant has the burden of proof, the weight of the evidence favors the manager's account. The facts have been found in accordance with the manager's testimony on this point.

occurred Thursday through Monday, and so did not interfere with claimant's duty to place food orders, as claimant placed food orders each week on Tuesday. During the time off, claimant was without cell phone service, and did not work.

(10) Claimant found that the facility continued to have staffing shortages following the transition to the employer. She continued to work long hours, putting in about 50 hours a week. Claimant did not raise the staffing shortages and her workload with the employer's human resources (H.R.) department. Claimant complained to her manager about her dissatisfaction with the employer. Claimant's manager was aware that claimant needed more workers. The manager urged claimant to ask Volare's human resources and nursing home administrator, the individuals responsible for hiring rank-and-file dining workers, to post jobs so that more workers could be hired.

(11) Claimant viewed the transition to the employer as "terrible" and "chao[otic]." Transcript at 11. Claimant's long work hours and limited ability to take as much vacation time as she desired made her distressed and tired. Claimant decided to quit working for the employer.

(12) On April 8, 2024, claimant gave notice of her intent to resign effective April 30, 2024. Exhibit 1 at 1. Thereafter, the employer asked claimant to remain until May 10, 2024, to help train her replacement. Claimant agreed to do so, worked until May 10, 2024, and resigned that day as planned.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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.

The main reason claimant stopped working for the employer was due to her long work hours and limited ability to take as much vacation time as she desired. Claimant did not meet her burden to prove that she quit work with good cause based on these reasons. Staffing shortages had long been a feature of claimant's work at the nursing home facility. Though staffing shortages continued following the January 15, 2024, transition to the employer, claimant did not assert that the problem worsened under the employer or created any hardships that were different in character from those she had tolerated throughout the years prior to the transition. At the time she resigned, claimant worked about 50 hours per week, a substantial amount, and more than a full-time work week of 40 hours, but not an amount of weekly work hours that was extraordinary for a manager to maintain.

Moreover, the record suggests that claimant failed to pursue efforts that might have spurred hiring and addressed the staffing shortages. For example, claimant did not raise the staffing shortages and her workload with the employer's H.R. department. Doing so might have caused the employer's H.R. department to convey the need for hiring to Volare's human resources and nursing home administrator,

the individuals responsible for hiring rank-and-file dining workers, which may have addressed the staffing shortage. Similarly, claimant's manager was aware that claimant needed more workers and urged claimant to ask Volare's human resources and nursing home administrator to post job postings, but the record lacks evidence that claimant ever raised the matter with Volare's human resources or nursing home administrator. For these reasons, claimant failed to show that staffing shortages and her workload presented her with a situation of such gravity that she had no reasonable alternative but to leave work when she did.

As to claimant's limited ability to take as much vacation time as she desired, the examples claimant cited at hearing of how this impacted her occurred months or years before her resignation. Claimant's inability to take time off to be with her daughter during her surgery occurred in or around 2021. Claimant's daughter's wedding occurred in 2023, months before claimant quit, and although claimant did not get the week off work she requested, she did receive two days off and did not miss the wedding ceremony. *See* Transcript at 17. Claimant took five days off in December 2023, and although she took her computer with her and worked, this too occurred before the transition to the employer and claimant's eventual May 10, 2024, resignation. In contrast to these days off from December 2023, claimant's manager testified un rebutted that claimant took five days off work in April 2024, shortly before claimant's resignation, and that this time off was scheduled so it did not interfere with claimant's duty to place food orders, and furthermore claimant did not work during this period because she did not have cell phone service. Transcript at 27. Thus, the concrete examples of how claimant's limited ability to take vacation time impacted her were remote in time to when claimant quit, and the record shows that the time off she took nearest in time to her resignation took place without interference from work. These facts suggest that claimant's limited ability to take as much vacation time as she desired did not place her in a grave situation.

Furthermore, although claimant believed that her manager had told her that if she wanted to take a vacation, she had to "find [her] own coverage," something that claimant could rarely do, the manager denied telling claimant that at hearing and the weight of the evidence favors the manager's account on that point, given that the evidence is equally balanced and claimant has the burden of proof. *See* Transcript at 13, 32. Instead, the employer's policy required claimant to request time off 30 days in advance, and upon such request, the employer would put a plan in place to cover the facility during claimant's time off. Claimant did not follow this procedure when she took five days off in April 2024, and claimant conceded at hearing that she was unfamiliar with the employer's policy governing vacation requests and had never read the employer's employee handbook. Transcript at 13-14. Thus, to the extent claimant quit work because of her limited ability to take as much vacation time as she desired, claimant failed to pursue the reasonable alternative of following the employer's 30-day request procedure, which would have caused the employer to implement a plan to cover the facility while claimant was away, and thus ensure claimant receive time off without interference from work.

To the extent claimant quit work because of aspects of the transition of the nursing home's dining services to the employer, claimant likewise quit work without good cause. When asked at hearing to name the specific occurrence that led her to quit, claimant cited the transition of the nursing home's dining services from Volare to the employer, which claimant described as "terrible" and "chao[tic]." Transcript at 11. The main examples claimant offered of how the transition went poorly were that, previously, claimant used a single wholesaler to order food for the facility but that under the employer, bread, milk, and vegetables were ordered from different wholesalers and, sometimes, claimant had to

buy items from a supermarket. Transcript at 11-12. Another point claimant raised was that the employer had not set up an order guide for the facility, which increased the time it took claimant to place a food order. Transcript at 12. A reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would not leave work because of these matters. While the requirement to use multiple vendors and the lack of an order guide was frustrating to claimant, claimant did not show that the inconvenience she experienced was so burdensome or oppressive to have presented her with a grave situation.<sup>2</sup>

For the foregoing reasons, claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits effective May 5, 2024.

**DECISION:** Order No. 24-UI-264623 is affirmed.

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

**DATE of Service:** October 18, 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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<sup>2</sup> Claimant also testified at hearing that she disapproved of the fact that the employer did not communicate about the transition “until the day of the takeover” and expressed frustration that some of her colleagues were, in her view, well paid but “constantly complaining,” which was “just wearing on” claimant. Transcript at 12, 16. These aspects of the transition to the employer did not present claimant with a grave situation and so, to the extent claimant quit work based on these reasons, she quit work without good cause.



# 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)

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