

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0826**

*Application for Review Timely*  
*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On July 15, 2024, 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 April 28, 2024 (decision # L0005161902).<sup>1</sup> Claimant filed a timely request for hearing. On October 23, 2024, ALJ Jarry conducted a hearing, and on October 25, 2024, issued Order No. 24-UI-270866, modifying decision # L0005161902 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective March 24, 2024. On November 8, 2024, claimant filed an appeal that was not recognized as an application for review of Order No. 24-UI-270866. On November 14, 2024, Order No. 24-UI-270866 became final without a recognized application for review having been filed with the Employment Appeals Board (EAB). On December 4, 2024, claimant filed a late application for review with EAB.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the statement included with claimant's late application for review, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record. Only the portions of EAB Exhibit 1 describing why the late application for review was filed, rather than the portion consisting of argument or new information regarding the merits of the appeal, were considered.

<sup>1</sup> Decision # L0005161902 stated that claimant was denied benefits from June 23, 2024 to June 21, 2025. However, because decision # L0005161902 concluded that the work separation occurred on April 29, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 28, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

**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. EAB considered only information received into evidence at the hearing when reaching this decision, and the portions of EAB Exhibit 1 described above. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Florence Dental Clinic, Inc. employed claimant at their clinic in Florence, Oregon, most recently as a dental assistant, from September 9, 2022, until March 28, 2024.

(2) Claimant worked part time, typically seven to eight hours per day, four days per week. Claimant was paid \$17 per hour as of March 2024.

(3) Throughout claimant's employment, claimant lived in Florence with her boyfriend. Claimant's boyfriend worked in Veneta, Oregon, which was a one-hour drive from their home.

(4) In early 2024, claimant learned that her boyfriend's employer required him to move to Veneta because they planned to have him travel to locations farther from Florence. Claimant desired to move with her boyfriend to Veneta. The cost of commuting would not have exceeded claimant's earnings if she continued to work for the employer after moving.

(5) Also, by early 2024, claimant believed that the employer would soon offer her fewer work hours because one of their doctors had left the clinic. The employer had offered claimant, on average, slightly more working time each week during 2024 than they had in 2023. Claimant was aware of the employer's plans to expand their operations in April or May 2024 and offer her additional work hours as a result, but claimant did not believe the employer's plan would come to fruition.

(6) At least partly because of claimant's belief that the employer would reduce her hours, she felt that commuting to work from Veneta would not be worthwhile. Therefore, on March 14, 2024, claimant gave the employer notice of her intent to resign, effective March 28, 2024. Claimant did not work for the employer after that date.

(7) On October 25, 2024, Order No. 24-UI-270866 was mailed to claimant's address of record. Order No. 24-UI-270866 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 24-UI-270866 at 3. Order No. 24-UI-270866 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before November 14, 2024, to be timely." Claimant received Order No. 24-UI-270866 shortly after it was mailed.

(8) On October 28, 2024, apparently as a result of the issuance of Order No. 24-UI-270866, the Department issued decision # L0006937588, which contained the same conclusions as decision # L0005161902 and stated that claimant had the right to request a hearing by November 18, 2024. On November 8, 2024, claimant filed a request for hearing on decision # L0006937588 using Frances Online. The Department declined to process the request for hearing because claimant had already had a hearing on the matter, and on December 4, 2024, informed claimant of that decision and suggested that

she pursue her appeal by filing a late application for review of Order No. 24-UI-270866.<sup>2</sup> The November 8, 2024, request for hearing should have been treated as a timely application for review of Order No. 24-UI-270866.

(9) On December 4, 2024, claimant filed a late application for review of Order No. 24-UI-270866 with EAB.

**CONCLUSIONS AND REASONS:** Claimant's application for review was timely. Claimant voluntarily quit work without good cause.

**Late application for review.** ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist. 471-041-0060(1) (May 13, 2019) provides, "An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order."

The application for review of Order No. 24-UI-270866 was due by November 14, 2024. Therefore, the application for review claimant filed on December 4, 2024, was late. However, claimant's November 8, 2024, appeal constituted a timely application for review of Order No. 24-UI-270866.

Decision # L0006937588, issued October 28, 2024, contained the same conclusions regarding the work separation as decision # L0005161902. It can reasonably be inferred that the Department issued this administrative decision in error, because its conclusions did not reflect that Order No. 24-UI-270866 modified the effective date of the disqualification resulting from the work separation, and because the decision stated that claimant had the right to request a hearing on the matter when she did not have that right because a hearing on the matter had already been held. On November 8, 2024, claimant filed a timely request for hearing on decision # L0006937588. The Department declined to process the request because the request sought to appeal the same conclusions as those at issue in Order No. 24-UI-270866. Claimant's November 8, 2024, filing therefore expressed the intent to appeal the conclusions of that order, and is properly construed as an application for review of Order No. 24-UI-270866. Accordingly, claimant filed a timely application for review.

**Voluntary leaving.** 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

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<sup>2</sup> EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

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.

Per OAR 471-030-0038(5)(g), leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons. “Compelling family reasons” is defined under OAR 471-030-0038(1)(e) as follows:

\* \* \*

(C) The need to accompany the individual’s spouse or domestic partner;

(i) To a place from which it is impractical for such individual to commute;  
and

(ii) Due to a change in location of the spouse’s or domestic partner’s  
employment.

\* \* \*

A claimant who leaves work due to a reduction in hours “has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.” OAR 471-030-0038(5)(e).

Claimant voluntarily quit work because her boyfriend was required by his employer to move from Florence to Veneta and she desired to accompany him in the move. Claimant declined to commute from Veneta to continue working for the employer in Florence due, in part, to her belief that the employer would eventually offer her fewer hours to work.

To the extent claimant quit work due to the need to accompany her boyfriend in a household move, this did not constitute “compelling family reasons” under the rule. One of the required elements of OAR 471-030-0038(1)(e)(C) for a compelling family reason to exist is that it would have been “impractical” for claimant to commute to work from Veneta. Claimant testified that her boyfriend had made the one-hour commute, in the opposite directions, throughout the duration of claimant’s employment. Audio Record at 10:30, 11:10. Claimant did not explain why her ability to commute the same distance for her job would have differed from that of her boyfriend.<sup>3</sup> Further, as discussed in greater detail below, the record does not suggest that the cost of working, when factoring in the commute, would have exceeded her wages. Under these circumstances, claimant has not shown by a preponderance of the evidence that it would have been impractical for her to commute following the move. Therefore, claimant did not quit work due to compelling family reasons.

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<sup>3</sup> As explained earlier, EAB did not consider the assertion in claimant’s written argument that she was unable to drive because she failed to offer this information at hearing despite having the opportunity to do so.

Similarly, claimant did not face a grave situation because of the move. The record suggests that claimant would have continued to work an average of at least four eight-hour shifts per week had she not quit. The time and expense of eight hours of weekly commuting, when compared to claimant's weekly wages, were not such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would continue working under those circumstances. Accordingly, claimant has not shown good cause for quitting work due to the need to move to Veneta.

Claimant additionally asserted that she quit work, in part, because she believed that the employer intended to offer her fewer work hours. Claimant based this belief on one of the clinic's doctors having left and claimant's prediction that there would be less work as a result. The employer's witness testified that, according to payroll records, claimant's average weekly hours had increased slightly from the average hours she worked in 2023. Audio Record at 20:25. The employer's witness also testified that the employer had planned to expand their operations in April or May 2024 and, as a result, offer claimant additional work hours beyond her average of 32 per week. Audio Record at 20:09. Claimant agreed that she had been told of this plan but was "not confident" that the employer would follow through with it. Audio Record at 22:30. In weighing this evidence, claimant has not shown that, more likely than not, she faced a reduction in work hours such that she needed to quit work when she did.

Therefore, claimant did not face a grave situation in her belief that her hours would be reduced, and OAR 471-030-0038(5)(e) is inapplicable because she did not actually face a reduction in hours. Further, because claimant did not face a reduction in hours, this factor did not render the commute from Veneta to Florence impractical, as discussed above. Accordingly, claimant quit work without good cause.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective March 24, 2024.

**DECISION:** Order No. 24-UI-270866 is affirmed.

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

**DATE of Service:** December 31, 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

## 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**

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Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

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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.