

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0743

Reversed & Remanded

PROCEDURAL HISTORY: On May 22, 2026, 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 denied unemployment insurance benefits from February 22, 2026 to December 5, 2026 (decision # L0017576771). Claimant filed a timely request for hearing. On July 23, 2026, ALJ Bender conducted a hearing, and on July 31, 2026 issued Order No. 26-UI-336412, reversing decision # L0017576771 by concluding that claimant quit work with good cause and therefore was not disqualified from receiving benefits based on the quit. On August 17, 2026, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered the employer's written argument in reaching this decision.

FINDINGS OF FACT: (1) Nelson & Company, P.C. employed claimant as a tax preparer from February 25, 2026 to February 26, 2026.

(2) In 2021, claimant injured his back. The injury caused claimant severe pain and led to complications for which he received ongoing medical care. As a result of the back injury, claimant's doctors diagnosed him with lumbar radiculopathy, spinal stenosis, and spondylolisthesis.

(3) In 2022, claimant worked for the employer during the tax season. During that experience, the employer made available to claimant a sit/stand desk and an ergonomically adjustable chair. Claimant had found that this workstation accommodated his injured back.

(4) In January 2025, claimant had surgery on his spine. Following the surgery, claimant continued to have pain in his back. Claimant managed the back pain while working by frequently adjusting his posture and workstation position.

(5) In December 2025, claimant and the employer discussed claimant returning to work for the employer during the 2026 tax season. In that discussion, claimant told the employer that he had had spinal surgery in January 2025. He did not specifically request that the employer provide equipment to accommodate

his condition because he assumed he would have the same workstation he had had when he worked for the employer in 2022.

(6) On February 25, 2026, when claimant started working for the employer, he discovered that the sit/stand desk and ergonomic chair he had previously used were being used by another employee, and were not available. Claimant needed to adjust his workstation up and down to work comfortably, and found that the chair he was given was very uncomfortable.

(7) Claimant told the employer that he needed a sit/stand desk and an ergonomic chair. The employer gave claimant a tabletop computer stand riser that could be raised to standing position. The riser gave claimant the ability to sit or stand, but was not adjustable beyond those two positions. When in the sitting position, the computer keyboard was higher than claimant's arms and in an uncomfortable position for claimant to work. The employer told claimant he could use any other chair in the office. There were three other chairs in the office, which claimant tried,¹ but found that the other chairs were not any better than the chair he had been assigned. Claimant asked the employer if he could bring his own ergonomic chair from home into work, and the employer agreed that claimant could do so. When claimant got home after work on February 25, 2026, he determined that he could not transport his ergonomic chair to the employer's office because it was too heavy and too big to fit in his car.

(8) Working from home was not available to claimant. The employer required training before allowing anyone to work remotely.

(9) On February 26, 2026, claimant worked for about an hour using the riser and non-ergonomic chair. Claimant found he was in substantial pain. Claimant considered asking the employer to buy a sit/stand desk and ergonomic chair to provide for him, but knew from his previous employment experience that the employer operated on a tight budget and intended to employ him only for about seven weeks for the duration of tax season. Claimant therefore reasoned that the employer could not afford to buy the equipment to accommodate his limited duration, and did not specifically ask the employer to buy a sit/stand desk and ergonomic chair to provide for him. After about an hour of working, claimant told the employer that he was in too much pain, could not work without a desk and chair that could accommodate his condition, and therefore was resigning with immediate effect. Claimant departed the employer's workplace and did not work for the employer again.

(10) The employer viewed claimant as an independent contractor who provided tax preparer services rather than an employee. The employer had claimant agree to a written "Seasonal Contractor Agreement," and had claimant fill out a W-9 tax form, a form intended to collect tax information from independent contractors. *See* Exhibit 1 at 7-18, Exhibit 3 at 3. However, the written agreement listed the employer's office as claimant's primary place of work, and contained a provision stating that claimant "agrees to be subject to the general supervision of and act pursuant to the orders, advice and direction of [the employer]." Exhibit 1 at 7-8.

¹ The employer testified that he did not see claimant try the other chairs in the office and checked with other employees, who told him that they also had not seen claimant try the other chairs. Transcript at 39. However, the employer conceded that he had "appointments coming and going" that day and claimant testified without equivocation that he had tried the three chairs. Transcript at 13, 39. The weight of the evidence therefore favors claimant's account that he tried the chairs and the facts have been found accordingly.

CONCLUSIONS AND REASONS: Order No. 26-UI-336412 is set aside, and this matter remanded for further proceedings consistent with this order.

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 Depart.*, 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 Depart.*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had lumbar radiculopathy, spinal stenosis, and spondylolisthesis, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that a reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would not have continued to work for their employer for an additional period of time.

The order under review concluded that claimant quit work with good cause. Order No. 26-UI-336412 at 3-4. The record as developed does not support this conclusion.

Remand is necessary to develop the record to permit an assessment of whether certain reasonable alternatives to quitting work were available to claimant. Specifically, the record shows that the employer had given claimant a riser, which, when placed in the sitting position, claimant found was uncomfortable to use because the computer keyboard was higher than his arms. On remand, the ALJ should inquire of the parties whether claimant told the employer that the riser was unsuitable because it resulted in the keyboard being too high to use when the riser was in its lowest position. Further, the record shows that the sit/stand desk and ergonomic chair claimant had previously used in 2022 were not available for claimant to use because they were being used by another employee. The ALJ should inquire whether the employer would have allowed, and if so, whether it would have been feasible, for claimant to trade workstations with the employee who was using the sit/stand desk and ergonomic chair claimant had previously used. The ALJ should also ask whether the employer would have been willing to assist claimant with bringing his chair to the employer’s office, and, if so, whether the employer had the means to transport the chair, given its size and weight.

Remand is also necessary for further development of the record to assess whether claimant’s relationship to the employer was that of an independent contractor. If it was, claimant’s ending of the relationship on February 26, 2026, would not have constituted voluntarily leaving “work” within the meaning of ORS 657.176(2)(c). This is so because OAR 471-030-0038(1)(a), defines “Work” as “the continuing relationship between an employer and an employee” and states that the section “does not apply where no employment relationship exists because the worker is an independent contractor or operating an independently established business.” Thus, if claimant was an independent contractor, the relationship he ended on February 26, 2026 was not an employment relationship and did not constitute work and so his voluntary ending of the relationship would not have the potential to trigger a disqualification from benefits via ORS 657.176(2)(c). Similarly, if claimant was an independent contractor, wages earned from the employer would not have been earned in employment subject to ORS Chapter 657, and so would not be considered as part of claimant’s base year wages when determining a future initial claim,

meaning that the employer would not be held liable for unemployment insurance tax charges based on those wages.

The existence of the written “Seasonal Contractor Agreement,” and the fact that claimant filled out a W-9 form are not dispositive of whether claimant was an independent contractor. Instead, 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 subpart (a) above, under OAR 471-031-0181(3)(a) (February 1, 2007), the following criteria is used to determine whether a person is “free from direction and control over the means and manner of providing” services to others:

- (A) “Means” are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the “means” used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.
- (B) “Manner” is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the “manner” by which services are performed include such things as work schedules, and work processes and procedures, among other things.
- (C) “Free from direction and control” means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to

control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

Furthermore, 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.

On remand, the ALJ should ask questions to develop the record regarding the independent contractor criteria listed above. Specifically, as to ORS 670.600(2)(a), the ALJ should inquire whether claimant

was free from direction and control over the means and manner of providing the tax preparer services by asking questions based on OAR 471-031-0181(3)(a). This means the ALJ should ask, among other questions, whether the employer had the right to control the resources (such as equipment and work location) claimant used or needed in performing the tax preparer services or the method (such as work processes and procedures) by which claimant was to perform the services. The ALJ should also inquire to what extent, if any, claimant was free from direction and control over the means or manner by which he provided services given the contract's provision that claimant "agrees to be subject to the general supervision of and act pursuant to the orders, advice and direction of [the employer]." Exhibit 1 at 7. Further, as to ORS 670.600(2)(b), the ALJ should ask questions based on ORS 670.600(3) to determine whether claimant customarily engaged in an independently established business. This inquiry should involve questions to develop whether claimant maintained a separate business location generally; advertised, or provided contracted tax preparer services to other entities in the preceding 12 months; the extent of claimant's investment, if any, in equipment or licensure; whether claimant had the authority to hire or fire other persons in connection with the tax preparer services he offered the employer; as well as any additional questions based on the subparts of ORS 670.600(3). As to ORS 670.600(2)(c) and (2)(d), the ALJ should inquire whether claimant was responsible for obtaining any license or certificate necessary to provide the tax preparer services.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant quit work without good cause, Order No. 26-UI-336412 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-336412 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 2, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-336412 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

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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 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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