

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0198**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 104007). Claimant filed a timely request for hearing. On February 12, 2019, ALJ Frank conducted a hearing at which the employer did not appear, and on February 15, 2019 issued Order No. 19-UI-124765, affirming the Department's decision. On February 19, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that she did not present during the hearing. Claimant did not explain why she was unable to offer this information during the hearing or otherwise show as required by OAR 471-041-0090(2) (October 29, 2006) that she was prevented from doing so by factors or circumstances beyond her reasonable control. For this reason, EAB did not consider the new information that claimant sought to present by way of her written argument when reaching his decision.

**FINDINGS OF FACT:** (1) The Oregon Department of Human Services (DHS) employed claimant from July 16, 2014 until December 20, 2018. DHS first employed claimant as a child protective social worker and later as a social services specialist in its child welfare division.

(2) Beginning shortly after she was hired, claimant began to experience depression and anxiety due to the stressful nature of the work she performed and the scale of the workload. Claimant began to have panic attacks at work. Claimant consulted with a physician who treated her and prescribed medicine to control the depression, anxiety and panic attacks. As of 2018, claimant was involved in divorce proceedings, which increased the stress she felt and aggravated her symptoms.

(3) On several occasions during her employment, claimant missed work as a result of depression, anxiety and panic attacks. Claimant's symptoms caused her to leave work early or to be absent from work for two or three consecutive days or longer. When claimant returned to work after these absences, she brought notes from her physician excusing the absences due to mental health conditions. In 2018,

claimant's symptoms escalated and she lost twenty pounds, which she attributed to the depression and anxiety she was experiencing.

(4) On many occasions during her employment, claimant discussed the effects that her work had on her health with her supervisor. On occasion, claimant also discussed those effects with her supervisor's supervisor. Claimant's supervisor and the supervisor's supervisor finally told claimant that the nature of the work and the workload were not going to change and she should consider working at a different job. Claimant began looking for positions in any of the four DHS divisions for which she was qualified and which might be less stressful to her. Claimant's supervisor assisted her in looking for other work in DHS. Claimant initially did not consider taking new positions that paid less than her current position due to the financial exigencies of her divorce, but later was willing to do so as the divorce proceedings wound down. Claimant applied for some new positions with DHS, but was not hired.

(5) As of approximately 2018, both claimant's supervisor and the supervisor's supervisor began advising claimant to seek other work because the work she performed for the employer was making her sick. The supervisors did not suggest that the employer would adjust claimant's workload or job requirements to accommodate her health conditions. Claimant did not consider making such a request because, based on the supervisor's prior statements, she did not think the employer would or could allow an accommodation given the nature of her job. Claimant did not consider requesting a leave of absence due to her health conditions because, even if the employer allowed one, she did not think the circumstances of her job would change and when she returned from any leave she took she would only re-experience the same circumstances that had necessitated the leave.

(6) As of approximately October 2018, claimant and her supervisor began seriously discussing the need for claimant to resign because of the impacts of the job on her. Claimant's supervisor told claimant that "it [the stress] was only going to get worse" if she continued to try to perform her job. Audio at ~26:35. Claimant thought the employer was trying to "push" her toward the realization that she needed to quit. Audio at ~26:40. Around that time and after, claimant continued to look for other work with the employer and asked the employer if there were any other jobs she could perform for the employer and she was told there were none.

(7) Around approximately December 17, 2018, claimant's supervisor told claimant that she was going to be assigned more cases because an employee had left. The supervisor noted that the additional cases probably would add to claimant's anxiety and stress level, and stated again, "Maybe it's best you do [sic] just part ways." Audio at ~14:44. Afterward, claimant inquired if there was any other available work with the employer for which she was qualified, even if it involved a cut in pay, and she was told, "Absolutely not." Audio at ~31:25.

(8) On December 20, 2018, claimant voluntarily left work.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal

sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had depression and anxiety and was subject to panic attacks, which were permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

In Order No. 19-UI-124765, the ALJ concluded that claimant did not show good cause for leaving work when she did. While the ALJ found that the effects of claimant’s work on claimant’s mental health was grave, he concluded that claimant did not show good cause for leaving work because she did not pursue reasonable alternatives that were available to her before quitting. Order No. 19-UI-124765 at 3. He reasoned that claimant could have “more fully explored the possibility of a job transfer” within DHS, that claimant may have been “unwilling to accept a pay cut” in the new jobs she considered, and that claimant did not request a “workplace accommodation such as a reduction or change in job duties, reduction in hours or leave of absence.” *Id.* We disagree.<sup>1</sup>

At the outset, we agree with the ALJ that claimant’s reactions to the workplace were grave circumstances. The issue is whether, despite those reactions, claimant had reasonable alternatives to leaving work when she did. The ALJ’s conclusion that claimant did not make reasonable efforts to locate a new position before quitting is not supported by the record. With the assistance of her supervisor, claimant looked for other work with DHS for which she was qualified and applied for those positions. Audio at ~19:30. Claimant made several inquiries of the employer about alternative positions in DHS, but was told none was available. Audio at ~20:30. While claimant was initially may not have been willing to accept a new position that paid less than her current position, claimant testified that she was willing to accept a lower paying position after her divorce proceedings ended in 2018. Audio at ~20:58. Indeed, during the final week of her employment, claimant again inquired of the employer if there was other work available and told the employer that she was willing to accept a reduction in pay. Audio at ~20:40, ~31:25. The ALJ erred in concluding that claimant did not make all reasonable efforts to locate alternative positions with the employer in lieu of quitting.

With respect to requesting a workplace accommodation that would have reduced lessened her duties or her workload or her hours, claimant’s belief that doing so would have been futile was reasonable under the circumstances. That claimant’s supervisor made statements to claimant about the very nature of the job, or its inherent attributes, seeming to cause stress to claimant without suggesting a solution, when the supervisor was aware of claimant’s struggles, reasonably suggested to claimant that she needed to change rather than that the employer would modify the job to accommodate her conditions. As well, claimant reasonably inferred that it would be futile to seek job accommodations based on the

---

<sup>1</sup> The ALJ also suggested that claimant gave various and inconsistent reasons for quitting, including that she quit to avoid discharge, to attend school or because she thought she would obtain unemployment insurance benefits. Order No. 19-UI-124765 at 3. However, there was no reason to doubt claimant’s testimony that the Department had incorrectly inferred in decision # 104007 that she quit to avoid a discharge, when she had not actually quit for that reason. Audio at ~9:20, ~26:33. Claimant further testified during the hearing that she did not consider attending school to obtain a more advanced degree until *after* she had quit. Audio at ~23:27. While claimant also testified that her supervisor and her union had assured her she was going to receive benefits upon quitting, there was no evidence in the record that claimant quit work in order to receive unemployment insurance benefits. Audio at ~21:50. There was inadequate evidence in the record to support that claimant left work for any other reason than the effects of workplace stress on her medical conditions.

supervisor's final statements to her that her stress was likely going to increase due to an increased workload, and the supervisor's recommendation that she probably wanted to resign to avoid that stress without offering any alternative to quitting. *See Early v. Employment Department*, 274 Or App 321, 360 P3d 725 (2015) (when employer knew that claimant was quitting due to an inability to resolve a particular workplace problem for six months, the employer's failure to affirmatively offer any alternatives suggested that there were none, and claimant's further attempts at resolution would have been futile). Based on the totality of the circumstances, it was reasonable for claimant not to consider workplace accommodations as an alternative, or to believe that workplace accommodations would not be available since, to make the job suitable, the employer would have needed to change its essential nature.

With respect to a leave of absence as an alternative, claimant testified she did not pursue one because she thought her work situation would not change during a leave and she would return to the same stresses with the same harmful results. Audio at ~16:45. On similar facts, the Court of Appeals has concluded that a leave of absence was not a reasonable alternative to leaving. *See Early v. Employment Department*, 274 Or App 321, 360 P3d 725 (2015) (leave of absence was not a reasonable alternative when claimant's work circumstances made her sick and suicidal and a leave would not change those circumstances, but would merely interrupt the continuation of the stress). On this record, a leave of absence was not a reasonable alternative to leaving work for claimant, and no other reasonable alternatives to quitting existed under the circumstances.

Claimant met her burden to show good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-124765 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service:** March 25, 2019

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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](http://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.surveymonkey.com/s/5WQXNJH>. 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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.