

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0456**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #102255). Claimant filed a timely request for hearing. On April 29, 2019, ALJ Snyder conducted a hearing, and on May 7, 2019 issued Order No. 19-UI-129502, affirming the Department's decision. On May 14, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not certify that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). 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 them from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Asante employed claimant to perform insurance verifications from June 6, 2016 until February 8, 2019.

(2) Claimant experienced migraine headaches that were accompanied on occasion by seizures. Claimant also had asthma.

(3) During claimant's employment, the employer changed claimant's work location. The building into which the employer relocated claimant and her coworkers was older. Shortly after claimant started working in the older building, her migraine headaches and asthma intensified, she had seizures, and experienced breathing difficulties and bronchitis.

(4) Once, after claimant was relocated to the new building, she became dizzy and fell down in the breakroom. She went to urgent care for treatment. Claimant's migraines continued in the new building. On another occasion, claimant went blind in one eye while at work. On a third occasion, claimant had a

seizure at work and was not able to drive home safely. Claimant went to her physician about the symptoms she was experiencing. The physician told claimant that the lighting in the workplace might be causing or contributing to the symptoms. The workplace did not have windows, was without natural light, and was dim except for the areas directly illuminated by fluorescent lights.

(5) During her employment, claimant was often ill and absent from work due to her migraines and asthma-related symptoms. Claimant told her supervisor that she thought the poor lighting in the workplace was affecting her health and exacerbating her migraines. Claimant also notified her supervisor that she thought there might be issues with the air quality in the workplace. The employer commissioned an air quality test for the building and it was found to be within acceptable limits. In approximately November 2018, the building in which claimant worked had a mice or rat infestation.

(6) In approximately December 2018, after claimant complained to her supervisor again about the lighting, the supervisor assigned claimant to a different desk with different illumination. While the move helped somewhat, claimant continued to experience complex migraines, seizures and asthma. Claimant asked the employer if she could be transferred to a different building or workplace because of her health issues. The employer told her that because she was hired for a particular position that was located in a particular building, it could not transfer her, although she could apply for a new position in a different building. Claimant looked into applying for a new position, but none was available.

(7) Claimant continued to experience complex migraines, seizures, asthma, and breathing difficulties while at work. Claimant felt overwhelmed by ongoing symptoms and health concerns that had not been alleviated. On January 25, 2019, claimant notified the employer that she was leaving work in two weeks. On February 8, 2019, claimant voluntarily left work due to her continuing health issues.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work with 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) (December 23, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had complex migraine headaches and asthma, both of which appear to be permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

Order No. 19-UI-129502 concluded that claimant voluntarily left work without good cause. After appearing to find that claimant’s health conditions were grave, the order nevertheless found that claimant did not show good cause for leaving work because reasonable alternatives were available to address her health concerns other than quitting work. In particular, the order reasoned that claimant “could have requested to take a leave of absence to treat her health conditions.” Order No. 19-UI-129502 at 2. The order also reasoned that claimant “could have complained to the [e]mployer prior to leaving work that she felt the building was aggravating her asthma.” Order No. 19-UI-129502 at 2. However, the record does not support those assertions.

At the outset, the weight of the evidence shows that claimant's situation was grave given the nature of the health issues she experienced after being relocated to the new building. Notably, the employer's witnesses did not challenge claimant's description of her symptoms or that they were severe. The issue is whether claimant had alternatives to quitting that would have significantly lessened the negative health impacts of working in the new building.

With respect to the alternative of taking a leave of absence, the parties did not dispute that the aggravation of claimant's health conditions was caused by something in the building. That claimant might be away from the workplace while on leave would not address the conditions in the building that were negatively affecting her health. The negative symptoms claimant experienced would most likely have recurred when she returned to work in the building after the leave was over. Thus, given the nature of the problems that claimant was experiencing, a leave of absence was not a reasonable alternative to quitting. *See Warkentin v. Employment Department*, 245 Or App 128, 261 P3d 72 (2011) (leave of absence is not a reasonable alternative when it would not remedy the underlying conditions that caused claimant to become ill).

The alternative of complaining to the employer about the building aggravating claimant's asthma also was unlikely to effectively remedy the situation. Even had the employer taken steps in response to a complaint about claimant's asthma, the evidence does not show that those same steps also would have lessened the occurrence claimant's complex migraines and seizures. Given the various negative health symptoms that claimant was experiencing, it is unlikely that making an asthma-specific complaint would have been an effective alternative to leaving work over symptoms due to the complex migraines and seizures that claimant also experienced.

It appears most likely that claimant would have needed to work in a different building to remain employed. There was no evidence that claimant had the option of changing work locations. Indeed, the record shows that when claimant requested a transfer to a different building, the employer refused. Audio at ~21:40.

Claimant had good cause to leave work when she did. She is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

**DECISION:** Order No. 19-UI-129502 is set aside, as outlined above.

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

**DATE of Service: June 17, 2019**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week 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.

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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 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 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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