

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0125**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 3, 2019 (decision # 82805). Claimant filed a timely request for hearing. On January 16, 2020, ALJ Mann conducted a hearing, and on January 23, 2020, issued Order No. 20-UI-143140, affirming the Department's decision. On February 10, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that they provided a copy of their argument to the opposing party or parties 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 them 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). However, because this case is being remanded to the Office of Administrative Hearings (OAH) for further proceedings, each party may send new information to OAH and the other party and offer the new information into the record at the hearing on remand, in accordance with instructions OAH will send the parties in the notice scheduling the remand hearing. At that time, the ALJ will decide if the new information is relevant and material to the issues on remand and, if so, will admit it into the record with each party having the opportunity to respond to the new information. Any party wishing to submit information for consideration by the ALJ at the remand hearing should submit the information in accordance with the instructions that will be included in the notice of hearing. Any information submitted that does not comply with OAH's rules and instructions might not be considered.

**EVIDENTIARY MATTER:** At the January 16, 2020 hearing, the ALJ identified and admitted Exhibits 1-3 into the record. Transcript at 3-4. However, none of the exhibits identified and admitted by the ALJ were marked, which appear to be a clerical oversight. Accordingly, we have identified the exhibits based on the ALJ's description of them, and marked them as Exhibits 1 through 3.

**FINDINGS OF FACT:** (1) John Mullen and Company employed claimant as an independent property insurance claims adjuster from September 24, 2019 to November 5, 2019.

(2) Claimant had Attention Deficit Hyperactivity Disorder (ADHD) and Anxiety Disorder for which he had received treatment since 2015.

(3) When claimant interviewed with the employer, he was a resident of Oregon and understood that the position was in Hawaii. Based on his job interview, claimant understood that once he received a property damage claim, he was required to inspect the damage, prepare an estimate, and submit the relevant information on a standardized form to a designated recipient for one of nine different insurance carriers. Claimant had work experience as a claims adjuster servicing just two companies, but believed he could perform the work, as described to him in the interview, with training and accepted the job with the employer.

(4) Claimant began work for the employer on September 24, 2019 at their office on Oahu. After approximately two hours of training there, he was assigned property claims to work on. On October 5, 2019, the employer transferred claimant to Maui where he was to work independently from home. After one week, claimant began experiencing intermittent panic attacks because he was falling behind after discovering for the first time that the employer expected him to adjust claims for at least 90 different carriers with the reports customized for each carrier, and did not yet understand how to administer the claims and write reports tailored to the carriers involved.

(5) Claimant spoke with his manager about his concerns, and his manager suggested he contact a property claims supervisor at the Oahu office, which claimant did. The supervisor flew to Maui and spent a day with claimant shadowing him and providing suggestions regarding performing the work. The suggestions helped claimant, however, he continued to struggle with the work, and he continued to fall behind on completing his claims adjustments.

(6) Claimant's panic attacks became more frequent, and on October 21, 2019, claimant began treatment sessions with a local psychiatrist.

(7) On October 23, 2019, claimant contacted his claims manager for answers to some insurance coverage questions. During their conversation, the manager told claimant that he had "serious concerns" about the quality of claimant's work, and that he could "definitely see this ballooning out of control quickly and turning into a situation that work[ed] out badly" for both he and claimant. Exhibit 3 at 7. Later that day, claimant emailed the owner, expressed his fear of losing his job, and requested the opportunity to work with the manager to create an action plan, or to speak with the owner over the phone. The owner did not respond.

(8) On Friday, November 1, 2019, claimant had a telephone conference with the employer's human resources (HR) manager and property claims supervisor. The three of them discussed claimant's work performance, his active claims, what matters remained outstanding, and worked out a plan of action. Claimant was to work on the claims over the weekend and follow up on Monday, November 4 regarding his progress. The employer offered claimant the opportunity to attend a week of additional training after his progress report on Monday.

(9) Claimant worked late hours on November 1 and over the weekend on the suggested plan of action and made little progress. Claimant "had a breakdown [and] caved in" and came to the conclusion that "it was just something [he] wasn't able to do." Transcript at 22-23. On November 3, 2019, claimant

emailed the Hawaii Department of Labor explaining his work situation since hire, commenting that he was “freaking out” and “stressing out” over the employer’s work expectations after only a very short time, and requesting advice. Exhibit 3 at 4-5.

(10) On November 4, 2019, claimant emailed the employer regarding his lack of substantial progress on his claims. In his email, claimant mentioned that he was “leaning toward resigning.” Transcript at 42-43. The HR manager responded by email that she would try to set up a meeting between claimant and the owner to discuss the situation.

(11) On November 5, 2019, claimant emailed the HR manager and informed her that he was resigning. In response, the HR manager left claimant a voicemail that the employer did not want claimant to give up and that the employer wanted to assist him with his work. Claimant did not respond to the manager’s voice mail, and the employer accepted claimant’s resignation effective November 5, 2019.

(12) The employer was unaware of claimant’s panic attacks and anxiety reactions over his work performance and expectations. The employer would have allowed claimant to take sick time or a leave of absence if he had requested one.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-143140 is reversed and this matter is remanded for further proceedings.

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). “[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). Claimant had been treated for ADHD and generalized anxiety since 2015, a 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. 20-UI-143140 concluded claimant quit work without good cause, reasoning that despite being “overwhelmed with his job” and experiencing “anxiety attacks,” he failed to show that his anxiety created a grave situation for him and that he had no reasonable alternative to quitting, such as requesting time off work or accepting the employer’s offer of additional assistance. Order No. 20-UI-143140 at 3. However, the record, as developed, does not support the order’s conclusion and reasoning.

Claimant submitted his resignation on November 5, 2019 because over the weekend of November 1 through November 3, he “had a breakdown [and] caved in” before coming to the conclusion that continuing his employment was “just something [he] wasn’t able to do.” The record fails to show if and how working for the employer exacerbated claimant’s anxiety condition to the extent he became so overwhelmed with the job that he ultimately broke down and “cave[d] in” over the weekend. The record contains insufficient detail regarding the physical effects such as a lack of sleep or nausea claimant’s

anxiety had on him. Nor does the record show if and how claimant's ADHD affected claimant's ability to perform the job and whether that condition caused him to conclude that he could not, even with additional training, perform the job to the employer's satisfaction.

The employer's witness admitted that the "complexity of the job" was probably not something claimant could have anticipated before accepting it. Transcript at 33. In that regard, the record contains insufficient detail regarding whether the job in question was suitable for claimant under ORS 657.190<sup>1</sup> given his ADHD, anxiety condition and prior training and experience.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. 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 for a determination of whether claimant quit work with or without good cause and should be disqualified from benefits based on his work separation, Order No. 20-UI-143140 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-143140 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 19, 2020

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-143140 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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<sup>1</sup> ORS 657.190 provides, in relevant part:

In determining whether any work is suitable for an individual, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual should be considered.



# 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**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.

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