

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0464**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving unemployment insurance benefits effective January 26, 2020 (decision # 55220). Claimant filed a timely request for hearing. On March 20, 2020, ALJ Frank conducted a hearing, and on May 28, 2020, issued Order No. 20-UI-150376, affirming the Department's decision. On June 17, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) C & K Market Inc. employed claimant as the director of its bakery and deli from September 2012 until February 5, 2020.

(2) Claimant had periodic fever syndrome. Claimant's medical condition was difficult to manage, and claimant was often sick. Stress from work aggravated claimant's medical condition, and could trigger claimant's fevers. Once claimant had a fever, it would "[go] on for days," and was difficult to control. Audio Record at 6:57.

(3) In June 2019, claimant began to take intermittent family medical leave for periods of time when he was ill due to periodic fever syndrome.

(4) Claimant experienced work stress due to the employer's financial circumstances, which were not good. Claimant felt pressure from the employer's "leadership" to "put numbers that aren't real," and to "keep up [his] numbers." Audio Record at 5:55 to 6:35, 9:19. Claimant also felt stress when he had to miss work due to illness, because he would have to "take on where he left off," when he returned to work. Audio Record at 8:47 to 8:52.

(5) Claimant asked his supervisor if there were another position available that would reduce claimant's stress but allow claimant to remain employed. There were no other positions available that claimant was

qualified to perform at the corporate office. The employer had only one corporate office. There may have been a non-supervisory position claimant could have performed in one of the employer's stores.

(6) Claimant did not request a leave of absence from work, but did take periods of intermittent family medical leave. Claimant took medical leave from January 21 through February 5, 2020 due to his health because work stress was making his health condition worse. Claimant was sometimes unable to get out of bed, and had to go to a hospital emergency room for treatment.

(7) On January 22, 2020, claimant told his supervisor that he planned to quit work due to his health. On January 31, 2020, claimant gave the employer written notice that he was resigning due to his health, so that he could pursue his "life-long dream" of becoming a barber, and to spend more time with his family. Audio Record at 27:36.

(8) On February 5, 2020, claimant quit work to improve his health because work stress worsened his periodic fever syndrome. Although claimant did not have anything planned regarding pursuing a career as a barber, he aspired to become a barber if unable to find other work. Claimant hoped that he would be able to spend more time with his family, and less time in the hospital, if his health improved.

**CONCLUSIONS AND REASONS:** Claimant quit 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). "[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 periodic fever syndrome, 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. OAR 471-030-0038(5)(b)(G) provides that leaving work without good cause includes leaving work for self employment.

Although claimant stated in his resignation notice to the employer that he was quitting work to pursue his "dream" of being a barber, to spend time with his family, and due to his health, claimant testified that his primary reason for quitting work when he did was his health. Audio Record at 17:54 to 17:57. Order No. 20-UI-150376 concluded that none of those reasons was one of such gravity that claimant had no reasonable alternative but to quit work on February 5, 2020.<sup>1</sup> To the extent claimant quit work because he aspired to become a barber, we agree with Order No. 20-UI-150376 that claimant did not have good cause to quit when he did because leaving work for self employment is not good cause to quit under OAR 471-030-0038(5)(b)(G).<sup>2</sup> However, the record shows that claimant had good cause to quit work due to the impact of working for the employer on his health. Moreover, rather than being a separate

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<sup>1</sup> Order No. 20-UI-150376 at 3.

<sup>2</sup> Order No. 20-UI-150376 at 3.

reason for leaving work, the record shows that claimant's desire to spend additional time with his family was related to his health concerns, because he missed time with his family while he was hospitalized and ill from his medical condition.

It is undisputed in the record that work stress worsened claimant's medical condition and triggered fever episodes that were difficult to control. This posed a grave situation for claimant. Order No. 20-UI-150376 concluded that rather than quitting due to his health condition, claimant had the reasonable alternatives of continuing to use intermittent family medical leave, working part time, or demoting to a non-supervisory position "with less stress."<sup>3</sup> The record does not show that these were reasonable alternatives for claimant, or otherwise show that no reasonable and prudent person with the characteristics and qualities of an individual with periodic fever syndrome would have continued to work for their employer for an additional period of time.

The record does not show that demoting to a non-supervisory position in one of the employer's markets was a reasonable alternative for claimant. The record shows there was no other position available for claimant at the corporate office. Claimant asked his supervisor if there was another position claimant could take that would be less stressful, and claimant's supervisor told him that there was not another position. Nor does the preponderance of the firsthand evidence at hearing show that the employer offered claimant part-time work. The record does not show that a non-supervisory job would be less stressful or, why, if a non-supervisory job existed, the supervisor did not offer one to claimant. Nor does the record show that any other existing position was suitable for claimant. Claimant had worked for the employer since 2012 and directed two of the employer's departments. ORS 657.190 provides that in determining whether any work is suitable for an individual, the Department shall consider, 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, . . . and the distance of the available work from the residence of the individual." We cannot presume, based on this record, that a job in one of its markets was a suitable job for claimant.

Continuing to use intermittent family medical leave was not a reasonable alternative for claimant to quitting work when he did. Claimant had been taking time off work intermittently since June 2019, and claimant's circumstances continued to worsen. Also, taking additional leave was not a reasonable alternative for claimant because, when he returned to work, he returned to the same or worse circumstances than those that prompted claimant's need to take the leave. When claimant returned to work after leave, he returned to the same stress of "having to keep his numbers" due to the employer's financial situation, and claimant faced the stress of "having to take on where [he] left off," suggesting that upon his return to work, he faced the stress of making up for the time he had missed. Audio Record at 9:19 and 8:52. *See Warkentin v. Employment Department*, 245 Or App 128, 261 P3d 72 (2011) (A leave of absence is not a reasonable alternative when it would not remedy the underlying conditions that caused claimant to become ill); *see also Early v. Employment Department*, 274 Or App 321, 360 P3d 725 (2015) (A 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.

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<sup>3</sup> Order No. 20-UI-150376 at 3.

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

**DECISION:** Order No. 20-UI-150376 is set aside, as outlined above.

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

**DATE of Service: July 23, 2020**

**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](https://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 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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