

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0470**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause, and was disqualified from receiving unemployment insurance benefits effective November 17, 2019 (decision # 92322). Claimant filed a timely request for hearing. On June 10, 2020, ALJ Murdock conducted a hearing, and on June 12, 2020, issued Order No. 20-UI-150977, affirming the Department's decision. On June 16, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

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).

**FINDINGS OF FACT:** (1) Energy Storage Systems Inc. employed claimant as a technician from December 31, 2018 until November 19, 2019. Before accepting a permanent position with the employer, claimant had worked for the employer through a temporary staffing agency.

(2) Claimant's job with the employer often involved working with chemicals, primarily Hydrochloric Acid (HCL) while cleaning battery parts, and he was exposed to the chemical's fumes while doing so. In September of 2018, shortly after beginning his temporary work assignment at the employer and working with chemicals, claimant experienced an elevated heart rate and was admitted to a hospital emergency room. "14 days after I actually started [my temporary work assignment at the employer] . . . I was admitted to the Emergency Room for . . . an SVT. I had a supraventricular (sic) tachycardia which is elevated heart rate. So my heart rate jumped up to 180." Transcript at 5-6. Claimant had never experienced an elevated heart rate before September 2018. At a follow-up appointment, a physician speculated that his condition that day may have been caused by his chemical exposure at work.

(3) From that time to the end of his employment in November 2019, claimant recognized an almost “direct . . . correlation” between his use of HCL to clean battery parts during a workday and the onset of vomiting and headaches on the day or days that followed. Transcript at 10. Claimant began calling in sick and using his paid sick days to recover from the nausea and headaches he was experiencing on those days. Claimant usually had to take one day off. However, as time progressed, he sometimes had to take up to three days off to recover.

(4) Between September 2018 and November 2019, claimant’s supervisor, the operations manager, changed four times. When claimant explained the apparent correlation between his exposure to HCL and the subsequent vomiting and headaches he was experiencing, and asked the first three managers if there were other tasks for him to perform, they generally told claimant, “No.” Transcript at 12. Two managers denied him outright, and one stated, “That’s the nature of the beast. We do pay you well. You can either quit or you can do the work.” Transcript at 12, 13.

(5) When the fourth operations manager (DP) began supervising claimant, he noticed that claimant’s record showed excessive absenteeism, with most of it unpaid, which raised a concern for the employer. When DP first counseled claimant about the absenteeism, claimant explained the correlation between his exposure to HCL and his subsequent nausea and headaches. Transcript at 28. The fit of claimant’s protective mask was then examined, and although it was modified to fit claimant better, there was no improvement in claimant’s apparent reaction to working with HCL. Claimant also was assigned to work with a partner so the partner could monitor claimant’s protective equipment while claimant worked with the HCL, but that alternative also did not improve claimant’s reaction to the chemical. Transcript at 23. Claimant’s manager investigated the literature regarding the effect of various exposures to HCL and concluded that claimant apparently had a sensitivity to the chemical because the literature did not explain claimant’s physical reactions at claimant’s level of exposure. Exhibit 1 at 1-2. DP asked claimant to discuss the issue with his doctor so that the employer could approach the issue with more understanding regarding possible accommodations. Exhibit 1 at 2. Claimant did not discuss the issue with a physician because he knew that despite the employer’s previous work modifications to limit his HCL exposure, he was still getting sick shortly after any exposure to the HCL. Transcript at 9, 22-26.

(6) Claimant’s excessive absenteeism due to his apparent reaction to the HCL became problematic for the employer. Claimant’s manager counseled him about that issue on July 11, 12, 23 and 24, 2019, and on August 19 and 20, 2019. He gave claimant a warning in October 2019. The employer eventually told claimant that if he took more time off without paid sick leave, “We’re going to . . . let you go.” Transcript at 16.

(7) On November 13, 2019 claimant was again assigned to work with HCL, experienced vomiting and headaches as a result, and took the next three days off to recover using the last of his paid sick leave. Claimant concluded that the only modification that would allow him to protect his health and continue his employment was to perform work tasks that would not expose him to HCL. After concluding that was not an option due to the employer’s denial of his previous requests, claimant further concluded that his only remaining option to protect his health was to quit. On November 19, 2019, claimant notified the employer that he was quitting work immediately.

(8) On November 19, 2019, claimant quit work to protect his health.

**CONCLUSIONS AND REASONS:** Claimant voluntarily 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Order No. 20-UI-150977 concluded that claimant quit work without good cause, reasoning,

Claimant voluntarily left work because he unilaterally concluded that he was sick with vomiting and headaches because of the chemicals used in his job . . . He did not consult a doctor or obtain certification that his symptoms were, in fact, caused by the chemicals used in his job and that he needed reasonable accommodations for the sake of his health. That was a reasonable alternative to quitting work.<sup>1</sup>

However, the record does not support the order’s conclusion.

Claimant’s situation was grave. He had regularly experienced negative physical reactions, typically vomiting and headaches, after exposure to a work chemical, HCL, since the beginning of his work at the employer’s facility. His vomiting and headaches had worsened over time to the extent that during his last month of employment, he required three days off to recover from his physical reaction to the chemical. Although claimant had never been diagnosed with being susceptible to HCL exposures, both claimant and the employer recognized that he had an apparent sensitivity to HCL. By November 2019, claimant realized that whenever he worked with the employer’s chemicals, he got sick and that he had to make a change because he “only [had] one set of lungs.” Transcript at 11.

Claimant had no reasonable alternative to quitting when he did. Although he had asked prior managers to allow him to perform work tasks other than working with HCL because it caused him serious physical reactions, his requests were repeatedly denied. One manager explained, “That’s the nature of the beast. We do pay you well. You can either quit or you can do the work.” When claimant was counseled by his fourth manager (DP) about his excessive use of sick leave without pay, claimant explained to him his apparent sensitivity to HCL. DP investigated the fit of claimant’s protective mask and had it modified to better fit claimant, but that accommodation was unsuccessful in eliminating claimant’s reaction to HCL or resolving his attendance issues. Nor did DP’s decision to assign claimant to work with a partner so the partner could monitor claimant’s protective equipment eliminate claimant’s reaction to the chemical. Despite claimant also asking DP, claimant’s fourth supervisor, to allow him to perform work tasks other than working with HCL, claimant still was assigned to work with the chemical. Although claimant did not pursue DP’s suggestion that he consult with a physician regarding possible accommodations the employer could make, more likely than not, pursuing that alternative would have been futile. The employer had already pursued the reasonable options available to it to limit claimant’s exposure to HCL,

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<sup>1</sup> Order No. 20-UI-150977 at 2.

short of allowing him to work at other tasks, without success. Although claimant had repeatedly requested that he be allowed to work at other tasks that did not involve HCL, his requests were consistently denied. The option to work at other work tasks likely was not available to claimant as a technician at that time or the employer would have offered it to him. More likely than not, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would have quit work when claimant did to protect his health.

Claimant voluntarily quit work with good cause. Claimant is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

**DECISION:** Order No. 20-UI-150977 is set aside, as outlined above.

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

**DATE of Service:** July 24, 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](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.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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 الإستئناف 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)

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