

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0628**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 13, 2020, 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 unemployment insurance benefits effective March 29, 2020 (decision # 101647). Claimant filed a timely request for hearing. On September 9, 2020, ALJ Smith conducted a hearing, and on September 17, 2020 issued Order No. 20-UI-154062, affirming the administrative decision.<sup>1</sup> On September 23, 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).

**FINDINGS OF FACT:** (1) Sila, Inc. employed claimant as a salesperson from July, 2019 until April 3, 2020.

(2) Prior to July 2019, claimant had experienced post-traumatic stress disorder (PTSD). Transcript at 31.

(3) From the time she began working for the employer, claimant had a difficult working relationship with her coworker, "NC." Until about January 2020, NC was claimant's supervisor. After that time, claimant began reporting directly to the Chief Operating Officer (COO). Exhibit 1 at 1.

(4) Through her course of working for the employer, claimant felt that the employer did not give her access to the "tools" or "resources" necessary to do her job. Exhibit 1 at 1.

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<sup>1</sup> Order No. 20-UI-154062 incorrectly stated that claimant was disqualified from receiving benefits beginning March 29, 2022. Order No. 20-UI-154062 at 4. This appears to be a clerical error. The Order affirmed the administrative decision and should therefore have stated that the disqualification date was March 29, 2020.

(5) Approximately two weeks prior to April 3, 2020, the COO's secretary emailed claimant a pamphlet that detailed sexual harassment laws. Claimant did not know why the COO's secretary had sent it to her, and found it "very upsetting" that the secretary had done so. Transcript at 20–23.

(6) On or around April 2, 2020, the employer's intellectual property attorney emailed claimant a letter. The letter directed claimant to stop making "allegations," including allegations of "inappropriate conduct" towards her, or else the attorney would start a "legal investigation" against claimant. Exhibit 1 at 1.

(7) On April 3, 2020, claimant quit work.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-154062 is reversed and this matter remanded to the Office of Administrative Hearings (OAH) 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) (September 22, 2020). "[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 post-traumatic stress disorder, 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.

The order under review found that claimant "quit her job with the employer because she received an e-mail from one of the employer's lawyers indicating that she needed to drop some complaints that she made about the employer or that there would be an investigation"; that claimant "felt threatened by the email and the possibility of what it might lead to"; and that "claimant had not been satisfied with her working conditions." Order No. 20-UI-154062 at 2–3. The order concluded that claimant "may have suspected that something negative might end up occurring if an investigation had ensued but failed to establish why an investigation would, more likely than not, lead to an unfavorable outcome for her." Order No. 20-UI-154062 at 2–3.

While the above analysis is correct, it is not a complete account of the record. The record is also insufficient to determine if claimant quit work with good cause, or whether a reasonable and prudent person with claimant's characteristics would have continued to work for their employer.

The record shows that, following several months or longer of contentious working relationships with one or more coworkers, claimant quit directly following her receipt of the email from the employer's attorney. However, the details necessary to understand the context of claimant's decision to quit at that time are missing from the record. Claimant's testimony is at times too vague or general to understand what occurred or how workplace incidents affected claimant. The record must be developed to show what specific incidents occurred that caused claimant to quit when she did, including but not limited to what occurred, when the incidents occurred, who was involved, what was stated, and the effect of those

incidents on claimant. For instance, claimant repeatedly asserted that the employer denied her the “tools” needed to do her job, but claimant did not explain what such “tools” consisted of and how their absence impeded her work. *See, e.g.*, Transcript at 19, 24, and 27. Similarly, claimant asserted that it became “impossible to do [her] job” because the COO’s secretary sent her a sexual harassment pamphlet, but claimant did not explain how or why she became unable to perform her job after she received it. Transcript at 22–23. Most importantly, while claimant testified that she read the “investigation” to which the employer’s attorney referred as an “implied threat,” the record does not show how or why claimant felt threatened by the attorney’s statement or why she was concerned about the outcome of such an investigation. Transcript at 19–20.

That the record does not show claimant faced a situation of such gravity that she had no reasonable alternative but to quit is not, in and of itself, a basis for remand. The record to date shows that claimant was dissatisfied with her working conditions and believed that some unspecified harm might come to her as a result of the employer’s threatened investigation. Such circumstances, without further detail, are insufficient to meet claimant’s burden of proof. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000) (in a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence).

However, further inquiry into facts that are potentially material to the outcome of this case is required. On multiple occasions during the hearing, instructions or suggestions were made to claimant that she not repeat in her testimony information that was covered in her documentary evidence. Transcript at 17, 18, 23. Given the lack of clarity in claimant’s documentary evidence, a thorough questioning regarding its content may have yielded a much less ambiguous account of why claimant quit work when she did. On remand, the claimant should be prompted to clarify her meaning and explain precisely what happened, referring to the events described in the documentary evidence as necessary.

Further, claimant’s references to sexual harassment must be explored further on remand. Claimant variously testified that “a very good friend of” a person seemingly identified as the employer’s chief executive officer was being sued for sexual harassment; that “NC” did not want to work with claimant because he was “concerned about an abuse charge, or sexual charge”; and that around the time that the attorney send claimant a letter on/around April 2, 2020, there had been a “flurry of . . . emails . . . that had been about sexual [harassment].”<sup>2</sup> Transcript at 19. One can speculate as to who—perhaps claimant, or one or more of her coworkers—may have been facing the specter of sexual harassment complaints. The question of whether claimant quit work for good cause might be answered very differently depending on which of those scenarios, if any, occurred. The record must be developed further to answer such questions.

Finally, the order under review also concluded that, while claimant testified that she had PTSD, “the rule applying to people with such conditions”<sup>3</sup> was inapplicable to the outcome of this case because claimant declined to provide details about her condition. Order No. 20-UI-154062 at 3, footnote 2. However, the

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<sup>2</sup> While claimant interrupted herself without finishing this sentence, from context one can reasonably infer that she had been referring to emails regarding sexual *harassment*.

<sup>3</sup> OAR 471-030-0038(4) states, in relevant part, that “For an individual with a permanent or long-term ‘physical or mental impairment’ (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work.”

uncontroverted evidence showed that claimant suffered from PTSD. That fact is primarily relevant to the question of whether a reasonable and prudent person who suffered from PTSD would leave work under claimant's circumstances. Whether claimant had been officially diagnosed with PTSD, whether she was under a doctor's care, what kind of advice the provider gave her—all questions the ALJ asked of claimant during the hearing<sup>4</sup>—may be relevant in a good-cause analysis, but are unnecessary here merely to find that claimant suffered from a long-term mental impairment as defined either in OAR 471-030-0038(4) or 29 C.F.R. §1630.2(h)(2)<sup>5</sup>.

Although claimant declined to give detailed information regarding her PTSD, her refusal must be considered in light of the “violent crime” she alluded to that seemingly caused her PTSD. Transcript at 31. The line of questioning posed to her immediately focused on attempting to obtain from claimant a disclosure of sensitive medical information that, as discussed above, was not crucial to the analysis at hand and may even have had the effect of inadvertently impeding her testimony. Had testimony instead first been sought on the *effect* of claimant's PTSD on the circumstances that led her to quit without requesting potentially sensitive details, claimant might have been willing to offer it. On remand, the ALJ should posture the questioning as such.

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 for good cause, Order No. 20-UI-154062 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-154062 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: October 30, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-154062 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>4</sup> Transcript at 31–32.

<sup>5</sup> “Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.” 29 C.F.R. §1630.2(h)(2).



# 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**

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.

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