

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0700**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 8, 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 January 12, 2020 (decision # 82353). Claimant filed a timely request for hearing. On October 13, 2020, ALJ Wyatt conducted a hearing, and on October 21, 2020 issued Order No. 20-UI-155519, modifying the Department's decision by concluding claimant quit work without good cause, but was disqualified from receiving unemployment insurance benefits effective January 26, 2020. On November 4, 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) Codemay Inc. employed claimant as a digital marketing specialist from May 14, 2019 to January 25, 2020. Claimant worked in the employer's Portland, OR office, but the employer's headquarters were located in its Orange County, CA office.

(2) Claimant's work as a digital marketing specialist was stressful because the employer placed a "very high" responsibility on those employees for the success or failure of its business. Transcript at 48. Their function was to work closely with clients and run their advertising campaigns. The employer's CEO (AA) considered digital marketing specialists to be the "face of the company" with clients, which typically paid the employer substantial sums of money per month to promote their business. Transcript at 48.

(3) AA held daily Skype meetings with the digital marketing specialists as a group, continually emphasized that their errors could have grave consequences for the employer, and frequently criticized

individual specialists - sometimes threatening their jobs - for errors. Claimant believed those criticisms were unprofessional, overly aggressive and critical, and caused her substantial anxiety about making her own errors. Claimant frequently became physically ill, either on her way to work or at work, thinking about potential mistakes she had made or might make going forward. Exhibit 1 at 2. The continual stress and anxiety claimant experienced also caused her to gain weight, negatively affecting her health. Claimant did not seek medical or professional treatment for her anxiety because she could not afford it.

(4) During the weekend of December 7 and 8, 2019, the employer held a Christmas party at its Orange County, CA office and arranged for the Portland office to attend. While there, it became apparent that the employer was considering dissolving its Portland office altogether which caused the Portland employees substantial stress over potentially losing their jobs.

(5) On December 9, 2019, the Portland employees were called into a meeting with its founders, including AA, and accused of destroying the mood of the Christmas party, which they denied was their intent. Claimant considered the exchange in the meeting an “odd conversation” which had the effect of making the Portland employees feel “extremely guilty” without knowing why. Transcript at 14. Immediately after the December 9 meeting, claimant went to lunch with her brother, as was their practice almost every day. However, upon their return, the direct marketing manager called them both into her office and told them that it “looked suspicious” that they had gone to lunch together after the meeting, and that it appeared that they “were conspiring” or “becoming toxic,” which they denied. Transcript at 15.

(6) On or about December 10, 2019, claimant met with the direct marketing manager in the Portland office about possibly quitting her job. The manager was aware that claimant had been experiencing anxiety and health issues related to work and agreed with claimant that quitting the job probably would benefit claimant’s physical and emotional health. Exhibit 1 at 3. However, the manager asked claimant that any notice she gave be greater than two weeks to give the employer time to train a replacement, to which claimant agreed. Transcript at 17.

(7) On December 13, 2019, claimant gave the employer notice that she was quitting, effective January 31, 2020. Claimant submitted her resignation notice because she had been experiencing anxiety and health issues caused by what she considered a high pressure work environment and the direct marketing manager had suggested to claimant that quitting the job would be advisable for her physical and emotional health.

(8) On several occasions during the weeks after giving notice, claimant heard AA “yelling” at her manager, and her manager “crying and sobbing” so loud that it could be heard through her closed door. Exhibit 1 at 3; Transcript at 30. Those observations reinforced claimant’s decision to quit work because they made her realize that the work environment likely would not change.

(9) Claimant had planned to take a week’s vacation from January 18 through January 25, 2020 and then return to work from January 27 until January 31, 2020 to help with transitioning her clients to her replacement. However, on or about January 17, 2020, the employer notified claimant that it did not “need” claimant to return to work after that day. Transcript at 4. Accordingly, claimant’s last day of employment was January 17, 2020.

**CONCLUSIONS AND REASONS:** The employer discharged claimant, not for misconduct, within 15 days of claimant's planned voluntary leaving with good cause.

**Work Separation.** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Order No. 20-UI-155519 concluded that claimant quit work, effective January 31, 2020. Order No. 20-UI-155519 at 2-3. However, the record does not support the order's conclusion that claimant quit. On December 13, 2019, claimant gave the employer notice that she planned to quit work, effective, January 31, 2020. However, the employer did not allow claimant to work through her notice period, telling her on January 17, 2020 that it did not "need" claimant to return to work after that day. Because claimant was willing to continue working for the employer until January 31, 2020, but was not allowed to do so by the employer, the work separation was a discharge that occurred on January 17, 2020.

**Discharge.** ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a) (September 22, 2020).

The employer discharged claimant when it did after concluding that it did not "need" her to work after that day. The record fails to show that it discharged claimant because she had engaged in conduct it considered a willful or wantonly negligent violation of the standards of behavior the employer had the right to expect of her or a disregard of its interests. Accordingly, the employer did not discharge claimant for misconduct under ORS 657.176(2)(a).

**ORS 657.176(8).** Because the employer discharged claimant within 15 days of her planned quit on January 31, 2020, the provisions of ORS 657.176(8) may apply. That provision states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The voluntary leaving would be for reasons that do not constitute good cause; (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving, then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date."

Under ORS 657.176(8), it must be determined whether claimant's planned quit was with or without good cause. "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). 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-155519 concluded that claimant quit work without good cause, reasoning that, although choosing to discontinue working “in a stressful and emotionally trying environment... may have been in [claimant’s] best interests personally,” the record failed to show that no reasonable and prudent person, of normal sensitivity and exercising ordinary common sense, would have continued to work for the employer. However, the record fails to support that conclusion.

The record shows that claimant’s work environment was not only “stressful and emotionally trying,” but also caused her to often experience physical reactions to the stress by becoming ill, both on her way to work and at work, and to gain weight. The record shows that the employer placed substantial pressure on its digital marketing specialist to avoid mistakes when working with its clients. It conducted daily group Skype meetings when individual marketing specialists were openly criticized for any errors they had made and sometimes even threatened with the loss of their jobs. The record also shows that the employer even demonstrated a level of paranoia about claimant and her brother having lunch together during the week claimant submitted her resignation notice. Claimant’s manager was aware of how claimant had been reacting emotionally to the stresses of the job and how it had affected her health, and even agreed with claimant in early December that quitting the job would be best for claimant’s physical and emotional wellbeing. Transcript at 19-20. Although claimant admitted that she did not seek medical or professional help in dealing with her work-related anxiety, she explained that she did not do so because she could not afford it. Transcript at 21. Although claimant gave the employer more than two weeks’ notice of her intent to quit, she explained that she did so at her manager’s request, who wanted the extra time to transition claimant’s clients to another marketing specialist. Transcript at 17. Finally, claimant’s observation of AA’s frequent and angry criticism of claimant’s manager to the extent it made her manager cry during the weeks after claimant submitted her resignation notice reinforced her decision to quit.<sup>1</sup> Viewed objectively, the record as a whole shows that a reasonable and prudent person of normal sensibility, exercising ordinary common sense, would have quit work under the totality of the circumstances. Accordingly, claimant’s planned quit was with good cause.

Because claimant’s planned quit was with good cause, ORS 657.176(8) does not apply. Therefore, on this record, the employer discharged claimant, but not for misconduct under ORS 657.176(2)(a). Accordingly, claimant is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

**DECISION:** Order No. 20-UI-155519 is set aside, as outlined above.

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<sup>1</sup> Although the ALJ asserted at hearing that the proper focus in this case was claimant’s situation at the time claimant submitted her resignation notice, Oregon appellate courts have clarified that the relevant date in a quit case such as this is the date the claimant actually left work. Transcript at 8. *See, Roadhouse v. Employment Department*, 283 Or App 859, 391 P3d 887 (2017) (the relevant period to analyze whether an individual left work with good cause is the date the individual left work, not when the individual gave notice or another prior date); *see accord Kay v. Employment Department*, 284 Or App 167, 391 P3d 989 (2017) (*Kay I*); *Gaines v. Employment Department*, 287 Or App 604, 403 P3d 423 (2017); *Kay v. Employment Department*, 292 Or App 700, 425 P3d 502 (2018) (*Kay II*).

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

**DATE of Service: December 11, 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.

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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 desisyong ito.

## 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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