

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0809**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 26, 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 April 12, 2020 (decision # 93111). Claimant filed a timely request for hearing. On December 7, 2020, ALJ Murdock conducted a hearing, and on December 9, 2020 issued Order No. 20-UI-157454, affirming decision # 93111. On December 29, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant worked for Tera for PDX as a campaign manager from January 2020 until April 18, 2020.

(2) When claimant started working for the employer, she expected to work between 40 and 50 hours per week, but she found that she typically needed to work upwards of 60 hours per week to keep up with the campaign's workload. Claimant started work at 8 a.m. and sometimes worked until 11 p.m. or later.

(3) In March 2020, as a result of the amount of work the employer required her to complete, claimant began to experience symptoms of "acute distress disorder," which included regular panic attacks, disturbed sleep, and "severe emotional distress." Audio Record at 16:58. Prior to working for the employer, claimant had a history of experiencing panic attacks, for which she had previously sought psychological counseling. Claimant's counselor had previously suggested managing the panic attacks with breathing exercises. However, claimant found the breathing exercises to be ineffective in managing the panic attacks she experienced while working for the employer.

(4) About two weeks prior to April 18, 2020, claimant spoke to the employer about the difficulties claimant was experiencing at work. The employer agreed to claimant's request not to be contacted after 9 p.m. However, claimant's workload did not decrease. Claimant did not ask the employer for accommodations for her medical concerns because she believed the employer would retaliate against her if she did so. Claimant had previously asked the employer to allow her to work fewer hours. The

employer did not grant claimant's request, but responded by "immediately" placing claimant on a performance improvement plan. Audio Record at 21:30.

(5) During the course of the campaign, an organization which had endorsed the campaign lent the employer a staffer to support claimant and help with the workload. However, the staffer was unable to perform the work assigned to her, and she was removed from the position on April 17, 2020. The organization was unable to lend another person to fill the position, and the employer lacked the resources to hire someone for the position.

(6) Claimant did not seek a leave of absence prior to resigning, because she was concerned that doing so might result in negative attention from the press, potentially damaging both the campaign and claimant's own future career prospects.

(7) On April 18, 2020, claimant resigned as a result of her continued medical concerns and her understanding that the employer would not hire another person to support claimant's workload. The campaign concluded about a month after claimant resigned.

**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) (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 acute distress disorder,<sup>1</sup> 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.

Claimant quit work due to physical and mental health issues caused by working too much. The order under review concluded that claimant did not quit work with good cause because she did not pursue reasonable alternatives to quitting such as requesting a leave of absence, "seeking reasonable accommodations . . . such as [a] health care provider's restriction on the number of hours per day or week that she would be required to work." Order No. 20-UI-157454 at 3. The record does not support this conclusion. Seeking a leave of absence was not a reasonable alternative to quitting because the campaign was going to end a month after claimant quit. Further, while claimant's counselor did indicate that she would have advised claimant to seek medical leave had claimant continued working for the employer, the record does not show that the circumstances that caused claimant's medical concerns would have likely resolved had claimant taken medical leave, nor does the record show that medical leave was actually available to claimant. Exhibit 1.

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<sup>1</sup> Claimant established in her testimony that she had suffered from acute distress disorder or a similar condition for about 15 years, which is sufficient to show that the condition was a permanent or long-term physical or mental impairment. Audio Record at 17:25.

Similarly, the record does not show that a healthcare provider-mandated restriction on the number of hours claimant worked would have been a reasonable alternative to quitting, simply because no evidence was offered which would indicate that such an option was available to claimant. The record contains no indication that the employer—the election campaign of a political candidate running for local office—was subject to the Family Medical Leave Act (FMLA), Oregon Family Leave Act (OFLA), or any other law that would require the otherwise-unwilling employer to grant claimant’s request to work fewer hours. Even if such a remedy had been available to claimant, however, waiting for an indefinite period of time in order to compel the employer to allow her to work fewer hours would not have been a reasonable alternative. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim). The record does not show that any other alternatives to quitting were available. The record therefore shows that no reasonable and prudent person suffering from acute distress disorder would have continued to work for the employer for an additional period of time.

For these reasons, claimant quit work with good cause and is not disqualified from receiving benefits based on this work separation.

**DECISION:** Order No. 20-UI-157454 is set aside, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** February 3, 2021

**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.

**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.

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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 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**  
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