

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0060**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 7, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 1, 2020 (decision # 133914). Claimant filed a timely request for hearing. On January 5, 2021, ALJ Hoppe conducted a hearing at which the employer failed to appear, and on January 12, 2021 issued Order No. 21-UI-159023, affirming decision # 133914 but erroneously stating that claimant's disqualification from benefits was effective February 23, 2020. On January 20, 2021, ALJ Hoppe issued Order No. 21-UI-159373, which amended Order No. 21-UI-159023 to state that claimant's disqualification from receiving benefits was effective March 1, 2020. On January 29, 2021, claimant filed an application for review with the Employment Appeals Board (EAB), which EAB treated as an application for review of Order No. 21-UI-159373.

**WRITTEN ARGUMENT:** Claimant submitted written argument with her application for review and on February 10, 2021. Claimant did not declare that she provided a copy of her second argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Both written arguments 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 her 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) The employer, Providence Health, employed claimant as a mental health associate from 2010 until March 1, 2020.

(2) Starting in the spring of 2018, claimant began suffering from rheumatoid arthritis. Claimant's arthritis caused her severe pain, particularly while she was on her feet making rounds at work. Claimant sought treatment to improve her condition. Under the care of her physician, claimant tried two prescription medications to treat her arthritis but neither medication was effective.

(3) Due to her arthritis, claimant took two months of unpaid leave under the Family and Medical Leave Act (FMLA) in April and May 2019. When claimant returned to work following the leave, she continued to experience severe pain from the arthritis. Because of the persistent pain, claimant took additional unpaid FMLA leave on an intermittent basis in the early summer of 2019. Claimant's arthritis failed to improve following the FMLA leave that she took on an intermittent basis in the early summer of 2019.

(4) In the late summer of 2019, claimant requested and was allowed to transfer from the day shift to the night shift. Claimant hoped that working the night shift, which was less busy, would permit her condition to improve. The change to night shifts initially improved claimant's condition but eventually claimant's pain returned to the point that she "could hardly on some shifts, make those rounds." Audio Record at 16:31.

(5) In early 2020, claimant's daughter informed claimant that she could move in with the daughter in North Carolina and become the daughter's dependent, which would mean that claimant would not need to work and could potentially avoid the persistent pain she experienced while on her feet at work, and would have health insurance coverage under her daughter's plan. Claimant mentioned the idea to move in with her daughter to her physician; claimant's physician told claimant she felt it was a good idea for claimant's care.

(6) In February 2020, claimant experienced significant flare-ups such that she would "work, come home, and be in bed until [she] had to work again, and if it meant three days in bed before [she] moved again that's what [she] was doing." Audio Record at 27:36. Claimant's condition caused her to miss some work and get behind on her bills. Claimant decided to quit work and move in with her daughter.

(7) Claimant quit working for the employer on March 1, 2020. Claimant gave the employer 30 days' notice of her intent to quit and selected March 1, 2020 as her last day of work so that her health insurance coverage would continue throughout the month of March 2020. Claimant had some additional FMLA leave remaining at the time that she quit.

**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) (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 rheumatoid arthritis, 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's rheumatoid arthritis condition presented her with a grave situation. The record indicates that claimant's arthritis caused her severe pain particularly while she was on her feet making rounds at

work. The record shows that at the time she quit working for the employer, claimant was experiencing significant flare-ups such that she would “work, come home, and be in bed until [she] had to work again, and if it meant three days in bed before [she] moved again that’s what [she] was doing.” While Order No. 21-UI-159373 concluded that because claimant gave the employer 30 days’ notice of her intent to quit, claimant’s situation “was not so grave that she felt she had no reasonable alternatives to quitting work[,]” the record does not support that conclusion. Order No. 21-UI-159373 at 4. Claimant credibly explained that she gave the employer 30 days’ notice because mental health positions are hard to fill and she wanted to ensure that her managers “would have a lot of time to start looking” for a replacement. Audio Record at 23:35. Moreover, claimant selected March 1, 2020 as her last day of work so that she could continue to have health insurance coverage during the month of March 2020, a reasonable decision given claimant’s health circumstances.

Claimant’s situation was of such gravity that she had no reasonable alternative but to leave work when she did. The record supports that claimant pursued a number of alternatives to quitting, but all proved to be unsuccessful. Claimant tried two prescription medications but the medications were ineffective. Claimant took FMLA leave for a two-month period in April and May 2019 and on an intermittent basis in the early summer of 2019, but the arthritis condition did not improve upon returning to work from leave. Claimant transferred from the day shift to the night shift, but despite a temporary initial improvement, claimant’s pain while on the night shift reached the point that she “could hardly on some shifts, make those rounds.”

Claimant chose to quit only after her daughter presented her with an opportunity to become the daughter’s dependent and claimant’s doctor informed claimant that becoming the daughter’s dependent was a good idea for claimant’s care. While Order No. 21-UI-159373 concluded that claimant failed to pursue reasonable alternatives because claimant “could have taken FMLA leave again,” the record does not support this conclusion. Order No. 21-UI-159373 at 4. It is correct that the record shows that claimant had some FMLA leave remaining at the time she quit, however, the record indicates that claimant had tried taking FMLA on multiple occasions prior to quitting, and each time to no avail. Thus, the weight of the evidence supports that had claimant taken FMLA an additional time, doing so likely would have been futile and therefore was not a reasonable alternative to quitting.

Claimant established that no reasonable and prudent person with the characteristics and qualities of an individual with her rheumatoid arthritis would have continued to work for the employer for an additional period of time. Claimant voluntarily quit work with good cause and is not disqualified from receiving unemployment insurance benefits based on her work separation from the employer.

**DECISION:** Order No. 21-UI-159373 is set aside, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** March 4, 2021

**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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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