

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0155**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 11, 2021, 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 November 1, 2020 (decision # 151639). Claimant filed a timely request for hearing. On February 17, 2021, ALJ S. Lee conducted a hearing, and on February 25, 2021 issued Order No. 21-UI-161694, modifying decision # 151639 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 8, 2020. On March 2, 2021 claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the hearing record.

**FINDINGS OF FACT:** (1) Apria Healthcare employed claimant as a clinical care coordinator from August 2019 until November 10, 2020.

(2) In 2015, claimant was diagnosed with migraine headaches.

(3) In the spring of 2020, claimant's migraines caused her to miss work, and on April 23, 2020, the employer gave claimant a verbal warning about her attendance. At that time, the employer encouraged claimant to submit a request for Family and Medical Leave Act (FMLA) leave to excuse further absences caused by claimant's migraines. In the summer of 2020, claimant missed more work because of her migraines, and on August 7, 2020, the employer gave claimant a written warning due to her attendance issues.

(4) In early September 2020, claimant submitted a request to the employer for FMLA leave to excuse further absences caused by her migraines. The employer informed claimant that her request was incomplete because claimant failed to submit required documentation from a physician. The employer also informed claimant that she could request a non-FMLA leave of absence to address her medical issues. Claimant did not request such a leave of absence.

(5) In the fall of 2020, claimant made two or three attempts to see a physician to obtain the required FMLA documentation but had difficulty arranging an in-person appointment. The employer extended the deadline for claimant to produce the required FMLA documentation multiple times in September and October 2020.

(6) In October 2020, claimant's migraines became more frequent and were accompanied by chest pains. Claimant attributed the worsened symptoms to stress. In mid-October 2020, claimant saw a physician about her symptoms. Claimant asked the physician for the required FMLA documentation, but the physician stated that she could not provide the documentation because of the physician's specialty.

(7) By the start of November 2020, claimant's symptoms had worsened and claimant was "not able to function" at work. Audio Record at 16:47. Because of the symptoms, claimant called out sick from November 2, 2020 through November 10, 2020. On November 6, 2020, the employer denied claimant's FMLA request because claimant had not provided the required documentation.

(8) On November 10, 2020, claimant texted the employer stating that she was resigning effective immediately. Claimant quit working for the employer because she was concerned about her symptoms and thought she might lose her job because the symptoms had caused her to miss work from November 2, 2020 through November 10, 2020.

(9) Had claimant not resigned, the employer would not have discharged her because of her absences. Claimant's absences from November 2, 2020 through November 10, 2020 would have resulted in claimant receiving a final written warning.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without 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 recurring migraines, 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 did not establish that she had good cause to leave work when she resigned on November 10, 2020. Claimant quit because her worsened symptoms concerned her and she thought she might lose her job because the symptoms had caused her to miss work from November 2, 2020 through November 10, 2020. To the extent that claimant's decision to quit on November 10, 2020 was because she believed her discharge was imminent due to having missed work, the record does not show that claimant faced a grave situation at work. The employer did not plan to discharge claimant. Rather, the record indicates that the employer planned to give claimant a final written warning for her absences on November 2, 2020 through November 10, 2020. At hearing, claimant testified that she did not know that the employer's "last notification would have happened as far as my attendance." Audio Record at 35:13. While claimant may not have known what action the employer would take in response to her absences, as of November 2020, claimant had accrued only a first written warning. Given that the employer's response to claimant's absences had not progressed beyond a first written warning, claimant did not establish that she had a reasonable basis to assume that a discharge was imminent or inevitable due to her absences on November 2, 2020 through November 10, 2020. In any event, rather than resigning when she did due to her concern that the employer might discharge her for her absences, claimant could have asked the employer whether she faced a discharge for her absences. Had she done so, the record shows that the employer would more likely than not have told claimant she faced a final written warning, not discharge.

Claimant failed to show that she pursued reasonable alternatives prior to leaving work. Claimant made efforts to obtain FMLA leave but claimant's efforts were unsuccessful because she was unable to provide the employer with required documentation from a physician. However, claimant also could have requested a non-FMLA leave of absence, but did not do so. The record indicates that the employer informed claimant of her eligibility to request a leave of absence to address her medical issues at the time claimant made her request for FMLA in September 2020. Had claimant requested a leave of absence and been approved, claimant's worsened symptoms, which she attributed to stress, may have improved, allowing claimant to return to work. Claimant also could have used the time away from work during a leave of absence to obtain the required documentation to complete her FMLA request. Because requesting a leave of absence was an option available to claimant but claimant failed to pursue it, claimant did not meet her burden to show that she had no reasonable alternative but to leave work when she did.

Claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective November 8, 2020.

**DECISION:** Order No. 21-UI-161694 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 7, 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 denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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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 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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.