

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0202**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 27, 2020 (decision # 94047). Claimant filed a timely request for hearing. On March 1, 2021, ALJ Scott conducted a hearing, at which the employer failed to appear, and on March 2, 2021 issued Order No. 21-UI-161848, affirming decision # 94047. On March 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Mt. Hood Corporations Inc. employed claimant as a blinds installer from August 2020 until December 29, 2020.

(2) Claimant's fiancée also worked for the employer as a customer service representative. Claimant and his fiancée reported to the same manager.

(3) During the course of claimant's fiancée's work for the employer, the manager sexually harassed her, including slapping her buttocks and asking her what kind of underwear she wore. Audio Record at 10:40 to 10:54. Prior to the employer's Christmas party in December 2020, claimant was aware that the manager had behaved in a "creepy" manner towards his fiancée, but was not aware of the extent of it and "didn't think anything of it at the time." Audio Record at 11:11 to 11:45.

(4) At the employer's Christmas party, two co-workers separately told claimant about how the manager had been speaking to claimant's fiancée, and at that point claimant learned that the manager had been "talking about doing sexual things with [claimant's] fiancée." Audio Record at 8:10 to 8:46. Claimant and his fiancée met with the manager after the party to discuss the issue, but the manager denied any wrongdoing.

(5) Claimant found that it was stressful to continue to work with the manager, knowing that the manager had been sexually harassing his fiancée, and suffered from anxiety as a result. The situation was "affecting [claimant's] home life" as well as his work, and claimant felt that he "couldn't be in the same workplace" as the manager. Audio Record at 15:45 to 16:07. The employer did not have a human resources department to whom claimant could have spoken about the issue. Claimant's manager reported directly to the owner of the business, but claimant was unable to speak to the owner because the owner was sick and in the hospital at the time.

(6) On December 29, 2020, due to the manager's harassment of his fiancée, claimant voluntarily quit work.

**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). 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.

Claimant voluntarily quit due to the sexual harassment his fiancée suffered at the hands of their mutual manager. The order under review concluded that the manager's behavior "only became problematic, from claimant's point of view, when he became aware that [the manager] was making such comments in the presence of other employees, which [claimant] found out at the Christmas party," and that claimant's situation was therefore not grave because it only amounted, for claimant, to "an assault to claimant's ego." Order No. 21-UI-161848 at 3. The record does not support this conclusion.

At hearing, claimant answered affirmatively to the questions, "The difference between that time when you didn't quit and when you did quit was because then other people knew about it, right? [The manager] was doing it in front of other people?". Audio Record at 17:40 to 17:54. From this testimony, the order under review concluded that claimant quit due to "other people's knowledge" of the issue. Order No. 21-UI-161848 at 3. Although claimant did affirmatively answer those questions, he neither elaborated on that point further, nor offered unprompted testimony to suggest that other employees' knowledge of the harassment was the reason he quit. Instead, the balance of the evidence indicates that claimant quit due to the direct effects that the harassment had on him, including anxiety, damage to his home life, and a difficult working relationship with his manager.

Claimant's testimony does not make clear the precise extent to which he was aware, prior to the Christmas party, of the manager's harassment of his fiancée. For instance, claimant first testified that, prior to the Christmas party, he was only aware that the manager had acted "creepy" towards his fiancée. Audio Record at 11:11 to 11:45. Claimant later testified that his fiancée had told him, at some point prior to the Christmas party, that the manager had accompanied the fiancée on jobs and would "talk dirty to her." Audio Record at 17:02 to 17:37. However, regardless of that ambiguity, claimant consistently testified that he learned more about the manager's harassment of his fiancée at the Christmas party, and that what he learned caused him anxiety, and negatively affected his home life and his working relationship with his manager.

It is difficult to conceive of a successful working relationship with a manager who is known to be actively and with impunity sexually harassing any co-worker, let alone one's significant other. The effects of the harassment—particularly the fact that claimant felt that he "couldn't be in the same workplace" as the manager—therefore indicate a situation in which a reasonable and prudent person of normal sensitivity would quit work. Further, because claimant attempted unsuccessfully to address the issue with the manager, and because nobody else with authority over the manager was available, claimant quit work for a reason of such gravity that he had no reasonable alternative but to leave work.

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

**DECISION:** Order No. 21-UI-161848 is set aside, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service:** April 28, 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

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## 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 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**  
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