

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0314**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 2, 2021, 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 January 26, 2020 (decision # 74127). Claimant filed a timely request for hearing. On April 13, 2021, ALJ Scott conducted a hearing, and on April 19, 2021 issued Amended Order No. 21-UI-165088,<sup>1</sup> affirming decision # 74127. On April 21, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Dragonberry Produce Inc. employed claimant as their logistics manager from June 1, 2014 until January 31, 2020.

(2) Throughout the course of his employment, claimant experienced frequent verbal and physical abuse from his supervisor, who was the brother of the company's owner and reported directly to the owner. This behavior, which sometimes occurred as frequently as two or three times a week, included slapping claimant on the buttocks, yelling foul language at claimant when there was an issue at work, and calling claimant in the middle of the night about work issues, which disrupted claimant's sleep. The supervisor was physically much larger than claimant was.

(3) Because of the supervisor's conduct, claimant was afraid to go to work and was fearful while at work. Prior to working for the employer, claimant had never been diagnosed with a mental health

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<sup>1</sup> Amended Order No. 21-UI-165088 amended Order No. 21-UI-164918, issued on April 15, 2021, in order to "correct the year associated with certain dates." Amended Order No. 21-UI-165088 at 1. The two orders are otherwise substantially the same.

disorder. However, the mistreatment caused claimant to “constantly” have nightmares and disturbed sleep. Transcript at 10.

(4) Claimant attempted to address the supervisor’s conduct directly with the supervisor on a number of occasions, but the supervisor would only respond angrily to the suggestion that he stop treating claimant that way. Claimant also attempted to address the issue with the employer’s human resources department “every time” an incident occurred, but doing so did not stop the supervisor from acting as he did. Transcript at 16. On at least one occasion, as a direct result of a conflict between the supervisor and the owner, the owner mandated that the supervisor attend anger management classes. However, the supervisor reverted to his prior patterns of behavior toward claimant after attending the classes.

(5) Claimant did not seek medical attention for the mental health symptoms that resulted from the supervisor’s conduct because he could not afford treatment, and was concerned that seeking treatment could possibly anger his supervisor further.

(6) In October 2019, claimant and his supervisor both travelled to California for work. During the trip, the supervisor again yelled foul language at claimant after claimant delivered disappointing news to the supervisor. Claimant thereafter determined that he could no longer continue working for the employer, and notified the employer that he intended to quit in approximately three months, to allow the employer to find a suitable replacement for his position. Once claimant gave the employer his notice, he experienced significant relief knowing that he was leaving.

(7) On January 31, 2020, claimant voluntarily quit work because his supervisor physically and verbally abused him, and because of the effects that the abuse had on his mental health.

**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.

The order under review concluded that while “no one should have to tolerate that type of treatment in the workplace,” claimant did not quit for reason of such gravity that he had no reasonable alternative but to quit because, if it had been a grave reason, “he would not have been able to tolerate staying around for two months.”<sup>2</sup> Amended Order No. 21-UI-165088 at 3. The order under review further concluded that

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<sup>2</sup> The employer’s director of human resources testified at hearing that claimant gave two months’ notice, rather than three. Transcript at 6. However, the witness did not work for the employer at the time the events in question occurred and had no first-hand knowledge of the events at issue, and the first-hand accounts of both claimant and the owner indicated that claimant gave three months’ notice. Because first-hand accounts are afforded more weight, the record supports the conclusion that claimant gave three months’ notice.

claimant did not quit with good cause because he did not seek the reasonable alternatives of either seeking medical attention or “successfully impressing upon [the owner] the magnitude of the situation.” Amended Order No. 21-UI-165088 at 3–4. However, the record does not support those conclusions.

Claimant’s unrefuted testimony—as well as the testimony of one of his witnesses, a former employee—showed that claimant’s supervisor engaged in a regular, long-term pattern of abuse toward claimant. The abuse had a sufficiently severe impact on claimant that he “. . . finally said I have to leave or I’m gonna kill myself.” Transcript at 10. Working conditions so dire that they lead an individual such a mental state constitute a grave reason for quitting. In some cases, an extended period of notice prior to quitting might demonstrate that the circumstances are tolerable enough that they are not grave. Here, however, the record shows that claimant’s knowledge that he would be leaving soon was sufficient to bring him relief, thereby apparently making an otherwise untenable situation temporarily manageable. Claimant testified as much at hearing, characterizing his decision to leave as “the best thing [that] ever happened” in his life. Transcript at 14. For that reason, claimant’s having given three months’ notice that he was quitting did not negate the gravity of what would have otherwise likely been an indefinite period of suffering abuse from his supervisor.

To the extent that claimant failed to seek medical attention for the symptoms he experienced as a result of the supervisor’s abuse, the record does not show that doing so would have constituted a reasonable alternative to quitting. First, the record does not show that attending counseling, for instance, would have offered claimant any relief. However, even if the record did show that, one cannot reasonably infer from the record that any medical intervention claimant might have sought would have changed the supervisor’s behavior such that claimant no longer faced a grave situation. Further, claimant’s unrefuted testimony indicated that he was unable to afford medical attention, even if it would otherwise have been helpful. Therefore, seeking medical attention was not a reasonable alternative to quitting.

The record contains conflicting testimony regarding whether claimant notified the company’s owner of the supervisor’s abusive behavior towards him: claimant testified that he did notify the owner of what was happening, without success; the owner testified that claimant never complained to her about the supervisor, and that she would have addressed it immediately had she been aware of it. Transcript at 11, 47, 50. However, even assuming that claimant never brought the issue to the owner’s attention, the record shows that a reasonable and prudent person would have concluded that doing so was futile. Per claimant’s unrefuted testimony, the supervisor’s abusive behavior never stopped, despite claimant’s multiple complaints to the human resources department over the course of several years. Transcript at 16. Claimant’s witnesses also testified that they were both aware of the supervisor’s abusive behavior, and the owner herself testified that she personally mandated that the supervisor attend an anger management class after an argument between the two of them. Transcript at 50.

Even if the owner did not how claimant’s supervisor treated him, the record supports the conclusion that the problem was so pervasive that a reasonable and prudent person would have concluded that the owner was aware of the supervisor’s behavior, and that complaining to the owner would therefore be futile, either because the owner would take no action, or because any action she would take—such as mandating that the supervisor attend anger-management classes—would not change the supervisor’s behavior. This inference is supported by the owner’s failure at hearing to offer any specific solutions she might have implemented had she known about the problem, testifying only that, had she known about it, “I’d document it and we would change.” Transcript at 53. As such, attempting to address the issue with

the owner would not have been a reasonable alternative to quitting. Claimant therefore quit for a reason of such gravity that he had no reasonable alternative but to quit.

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

**DECISION:** Amended Order No. 21-UI-165088 is set aside, as outlined above.

S. Alba and D. Hettle;  
A. Steger-Bentz, not participating.

**DATE of Service:** May 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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