

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0407**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 29, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work with good cause and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 124203). The employer filed a timely request for hearing. On May 13, 2021, ALJ Snyder conducted a hearing, and on May 21, 2021 issued Order No. 21-UI-167269, affirming decision # 124203. On May 24, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Washington County employed claimant from November 14, 2005 until June 3, 2020. Claimant worked as an asset manager for the Housing Authority of Washington County.

(2) Claimant had diabetes. Claimant's diabetes caused him vision problems and pain in his feet. Over the course of his employment, claimant frequently worked in the employer's office with his shoes off to ease his foot pain. Claimant was also the oldest person in the employer's office during the last two years of his employment.

(3) In May 2019, claimant's supervisor and coworkers observed claimant at a staff meeting with his eyes closed. The supervisor suspected claimant may have been asleep and determined it was appropriate for claimant to complete a reasonable accommodation form regarding his diabetes condition. The employer requested claimant fill out a reasonable accommodation form. Claimant viewed the request as "demanding all sorts of evidence . . . from [his] doctor" that he be permitted to have his shoes off, which he thought was a "form of harassment." Transcript at 10, 23. Claimant declined to fill out the form and continued working with his shoes off in the employer's office without interference from the employer.

(4) In September 2019, the employer was displeased with the performance of a contractor the employer used to manage assets. One of claimant's tasks was to oversee the employer's relationship with the contractor. On September 20, 2019, a coworker told claimant that given claimant's history with the contractor, "one could suspect something going on." Transcript at 34. Claimant interpreted the

coworker's comment as accusing him of taking money from the contractor. The coworker also suggested to claimant that he retire. Claimant complained about the encounter by email to his supervisor and the employer's human resources (HR) personnel, and HR personnel investigated. The HR personnel chose to take no action because claimant and the coworker did not have a supervisor and subordinate relationship. Claimant's supervisor informed claimant of the HR personnel's decision to take no action.

(5) In January 2020, claimant learned that the employer had asked an employee who reported to claimant to bill some of her hours worked to a grant program claimant believed the employee was not working on. The supervisor's deputy had previously assigned the employee to work on the program, but failed to inform claimant of that fact. Claimant sent an email to his supervisor and the supervisor's deputy stating that he disagreed with the billing practice and thought it was fraudulent.

(6) In April 2020, claimant informed the employer that he intended to delay his retirement until the end of 2021. Previously, claimant had announced he intended to retire at the end of 2020.

(7) On May 19, 2020, the employer conveyed a letter to claimant identifying issues with his performance and scheduling a pre-disciplinary meeting for May 22, 2020 to discuss the performance issues. The issues the employer identified included improving communications with federal agency partners, meeting deadlines, and correcting spelling and grammatical errors in claimant's written communications. At claimant's request, the employer rescheduled the meeting for June 3, 2020. Claimant was not at risk of losing his job at the June 3, 2020 pre-disciplinary meeting. The employer's expectation was for claimant to "step up on the performance piece," and the employer wanted to "hold [claimant] accountable for that performance and then go from there." Transcript at 30.

(8) On June 3, 2020, claimant submitted a memorandum responding to some of the performance issues specified in the employer's letter, and advised that he would quit working for the employer at the end of his shift that day. Claimant completed his shift and quit working for the employer on June 3, 2020. Claimant quit because he believed the employer had subjected him to discrimination based on his age and diabetes condition, and retaliation after he voiced his disagreement with the employer's billing practice and announced he was delaying his retirement until the end of 2021.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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 diabetes, 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 voluntarily left work on June 3, 2020 because he believed the employer had subjected him to discrimination based on his age and diabetes condition, and retaliation after he voiced his disagreement with the employer's billing practice and announced he was delaying his retirement until the end of 2021. Claimant did not establish he had good cause to quit with respect to these reasons.

To the extent claimant quit work because he believed the employer discriminated against him based on his age and diabetes condition, claimant did not establish that his situation was grave. The record does not show that claimant experienced unfair or discriminatory treatment. With respect to his diabetes condition, the record reflects that the employer requested claimant submit a reasonable accommodation form because they concluded it was warranted because claimant appeared to be sleeping during a work meeting. Claimant did not show that the employer's request was part of an effort to harass claimant or limit claimant's practice of working with his shoes off. Indeed, after claimant declined to submit the form, the employer did nothing regarding claimant's apparent nap during a work meeting, and claimant continued to work with his shoes off without interference. With respect to unfair treatment based on claimant's age, the record indicates that on one occasion, a coworker made comments to claimant including an inference that claimant took money from a client and the suggestion that claimant should retire, and that the employer investigated the incident. Because claimant and the coworker were peers, the employer opted to take no action against the coworker, and claimant's supervisor informed him of that fact. While the employer's reaction to the coworker's comments may have been disappointing to claimant, it did not constitute a situation of such gravity that claimant had no reasonable alternative but to quit.

The record likewise does not show that claimant faced a grave situation due to his belief that the employer retaliated against him for disagreeing with the employer's billing practice in January 2020 or announcing he was delaying his retirement. The employer's May 19, 2020 letter identifying claimant's performance issues and scheduling a pre-disciplinary hearing occurred after those two incidents. However, claimant failed to show that the sequence of events were linked in any way or that the performance issues the employer identified were a pretext for retaliation. The record fails to show that a reasonable and prudent person with the characteristics and qualities of an individual with diabetes would quit work based on this reason.

Claimant therefore quit work without good cause and is disqualified from receiving benefits effective May 31, 2020.

**DECISION:** Order No. 21-UI-167269 is set aside, as outlined above.

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

**DATE of Service:** July 1, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymzmo.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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