

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0431**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 8, 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 April 26, 2020 (decision # 95340). Claimant filed a timely request for hearing. On May 20, 2021, ALJ Wymer conducted a hearing, and on May 25, 2021 issued Order No. 21-UI-167385, affirming decision # 95340. On May 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Bi-Mart Corporation employed claimant as a hardware clerk from November 5, 2019 until April 28, 2020.

(2) At the time that claimant worked for the employer, she suffered from issues with her knees that required her to wear knee braces, and she also suffered from diabetes. Claimant's manager suggested to claimant that her knee issues could be a safety concern if she was carrying something heavy. Claimant was "very concerned that [she] would be let go or have [her] hours cut" because of the issues with her knees. Exhibit 1 at 2. Because of her diabetes, claimant needed to have regular access to drinking water to avoid dehydration. The employer's policy typically did not permit employees to keep a beverage with them on the sales floor while they were working. The employer suggested that both of these conditions could be accommodated under the Americans with Disabilities Act (ADA). Claimant declined to seek such accommodations because she did not want to be "labeled as having a disability." Transcript at 12.

(3) Claimant's duties included stacking items onto racks high off the ground and stacking large, heavy items (such as lawnmowers and table saws) several boxes high. Claimant felt that the employer asked her to perform these tasks in a manner that was unsafe.

(4) Claimant never reported her concerns about her medical conditions or safety issues, to the employer's human resources (HR) department or the district manager (the supervisor to whom claimant's manager reported) because other employees had told her that the issues would be "swept under the rug by H.R." and claimant therefore felt that doing so would be futile. Transcript at 16-17.

(5) Claimant last worked for the employer on March 16, 2020. Thereafter, claimant became ill for several weeks with what she suspected was COVID-19, and the employer placed her on a leave of absence. In mid-April 2020, after claimant recovered from the illness, and while she was still on a leave of absence, she cut her finger while sewing. The injury required three stitches. Claimant contacted her manager on several occasions during her leave of absence to ask him if she would be allowed to return to full time work while she had the stitches, and each time the manager told her that they would discuss the matter once she returned to work.

(6) In late April 2020, claimant spoke to her manager, who told her that she was “outside Bi-Mart policy” because she had not completed a separate leave of absence request for her finger injury. Claimant perceived this, along with the fact that her manager had not confirmed whether she would be returned to her full time position once she returned from leave, to mean that the employer might retaliate against her because of her absences when she returned to work.

(7) On April 28, 2020, as a result of claimant’s concerns about retaliation for her absence, safety issues at work, and medical accommodations, claimant voluntarily quit work.

**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 diabetes and knee issues, permanent or long-term “physical or mental impairments” 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 impairments would have continued to work for their employer for an additional period of time.

Claimant quit work due to a number of concerns that arose during the time she worked for the employer. Claimant’s ultimate concern—the one which arose immediately before she quit—was that the employer might retaliate against her due to her extended leave of absence which her manager had told her was not in accordance with the employer’s leave policy. The parties offered conflicting accounts of this interaction. Claimant testified that her manager told her that “there would be consequences for [her] missing work and being” out of compliance with the employer’s leave policy. Transcript at 7. Claimant’s manager testified that he did not think he had used the word “consequences” in that conversation. Transcript at 26. Even assuming that claimant’s account is correct, however, she did not show that a single reference to “consequences,” without more, would have caused a reasonable and prudent person with the medical conditions she suffered from to leave work for fear of retaliation. Therefore, claimant has not established that her concerns about the employer retaliating against her for her absence constituted a reason of such gravity that she had no reasonable alternative but to quit, and her decision to quit for that reason was not for good cause.

To the extent that claimant quit work because she was concerned that the employer would retaliate or discriminate against her because of her chronic medical conditions, claimant has also not shown that she faced a situation of such gravity that she had no reasonable alternative but to quit. While claimant's need to stay hydrated as a result of her diabetes is understandable, and might have constituted a grave situation, seeking an ADA accommodation as an exemption from the employer's general policy was a reasonable alternative to quitting. Claimant did not do so because she did not want to be "labeled as having a disability," but did not meet her burden to prove either that she *would* be so labeled, or else that being labeled as having a disability would have a negative effect on her. Similarly, while claimant stated that she was concerned that she would "be let go or have [her] hours cut" because her manager expressed concern about her ability to carry heavy objects while she suffered from the knee issue, claimant did not offer evidence sufficient to show that she had an objectively reasonable basis for believing that her manager would take action against her. For those reasons, claimant's concerns about her medical conditions at work did not amount to good cause for quitting.

Finally, to the extent that claimant quit because of her concerns regarding workplace safety, claimant has not shown that she quit for good cause. The parties offered conflicting testimony on the matter of claimant's safety concerns. Claimant testified that the employer required her to climb on top of pallets, which constituted a fall risk, and to stack heavy boxes by herself even though they were meant to be lifted by two people. Transcript at 8–9. Claimant's manager refuted this, and testified that it was not standard practice for employees to walk on pallets, that he had directed employees not to do so, and that heavy boxes like the ones claimant described would typically be stacked by two people. Transcript at 24–25. If claimant's version of events is correct, and she was directed or required to work in a way that was unsafe and posed an undue risk of injury, the situation she described may have been grave. However, it is unnecessary to resolve this conflict in the record because even if the situation was grave, claimant did not seek reasonable alternatives prior to quitting. At hearing, claimant testified that she spoke to her manager about her safety concerns at least once, as well as some of her coworkers, but was "belittled" and told that she couldn't perform her job duties. Transcript at 10. However, claimant also testified that she did not speak to the district manager or the employer's HR department about these issues because she understood, based on her coworkers' statements, that doing so would be futile. Claimant offered no evidence to corroborate that her coworkers' statements were reliable. Additionally, claimant's allegations of workplace safety violations, if true, could have exposed the employer to liability for workers' compensation claims or civil penalties, which makes more probable that the district manager and HR department would have been responsive had claimant raised her concerns with them. For these reasons, the record shows that, more likely than not, reporting any such safety violations to the district manager or Human Resources would have meaningfully addressed the situation, and therefore would have been a reasonable alternative to quitting.

For the above reasons, claimant voluntarily quit work without good cause and is disqualified from receiving benefits effective April 26, 2020.

**DECISION:** Order No. 21-UI-167385 is affirmed.

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

**DATE of Service:** July 2, 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](https://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 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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