

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0663**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 31, 2020, 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 September 13, 2020 (decision # 123943). Claimant filed a timely request for hearing. On August 6, 2021, ALJ Ramey conducted a hearing, and on August 12, 2021 issued Order No. 21-UI-172457, reversing decision # 123943 by concluding that claimant quit work with good cause and was not disqualified from receiving benefits based on the work separation. On August 17, 2021, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Meyer Distributing Inc. employed claimant most recently as a warehouse manager from August 1, 2015 until September 18, 2020.

(2) In March 2020, claimant injured his back at work. Claimant sustained two herniated discs as a result of the injury, which caused him muscle weakness and made him unable to lift or move things without severe pain. Claimant filed a workers' compensation claim and underwent physical therapy to treat the injury.

(3) Following the onset of the COVID-19 pandemic, the warehouse claimant managed became understaffed. Claimant attempted to hire new workers to address the understaffing problem, but few candidates applied or appeared for scheduled interviews. Because of the understaffing problem, claimant had to perform many of the routine lifting and delivery duties at the warehouse himself. Performing these duties was difficult for claimant because of his back injury.

(4) During the late spring and summer of 2020, the understaffing problem at the warehouse persisted and claimant continued having to perform routine warehouse duties himself, causing him severe pain. Claimant reported directly to the employer's CEO, and asked the CEO for help in addressing the understaffing problem. The CEO told claimant that it was claimant's job to ensure the warehouse was adequately staffed, but offered to engage recruiters to help claimant with hiring.

(5) Thereafter, claimant coordinated with the recruiters and the employer's human resources (H.R.) department to help pre-screen and schedule interviews but few candidates applied and the warehouse remained understaffed. Claimant continued performing warehouse duties himself, and tried to use the employer's warehouse equipment to lift and complete delivery duties without pain, but found that the equipment did not help.

(6) In August 2020, claimant completed the physical therapy called for under his workers' compensation claim. Claimant's doctor diagnosed him with degenerative disc disease and released him to full duty without restrictions. Although claimant had no restrictions required by his doctor, he found that his back injury had not improved. The warehouse remained understaffed and claimant continued to have to perform routine warehouse duties that caused him severe pain.

(7) On August 24, 2020, claimant asked the CEO to modify claimant's job duties to address his back pain. The CEO agreed to alter claimant's duties so that he would no longer handle logistics at the warehouse. Thereafter, despite the fact that he no longer handled logistics, claimant found that he still had to do routine lifting and delivery duties at the warehouse because of insufficient staffing.

(8) On September 11, 2020 claimant tendered a one-week notice of his intent to quit. Claimant worked through his notice period and quit as planned on September 18, 2020 due to his back injury.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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). Claimant had degenerative disc disease, 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 established good cause for voluntarily leaving work. Claimant quit work because of his back injury. Claimant's situation was grave because his back injury caused him severe pain when he lifted and moved things and the warehouse's persistent understaffing problem caused claimant to have to perform many of the routine lifting and delivery duties at the warehouse himself. Claimant pursued reasonable alternatives to quitting but those efforts were in vain. Claimant tried to hire new workers to address the understaffing problem, but few candidates applied or appeared for scheduled interviews. Claimant coordinated with recruiters and the employer's H.R. department to assist with hiring, but few candidates applied through the recruiters and the warehouse remained understaffed. Claimant attempted to use the employer's warehouse equipment to lift and complete delivery duties without pain, but claimant found the equipment did not help. Claimant requested the employer's CEO modify his job duties, but the modification the CEO agreed to still required claimant to do routine lifting and delivery duties at the warehouse. Claimant therefore had good cause to quit because he established that no

reasonable and prudent person with the characteristics and qualities of an individual with degenerative disc disease working in his position would have continued to work for the employer for an additional period of time.

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

**DECISION:** Order No. 21-UI-172457 is affirmed.

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

**DATE of Service:** September 16, 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.

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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 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.

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