

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0806**

*Modified*  
*Ineligible Week 36-20*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 4, 2020, 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 August 30, 2020 based on the work separation (decision # 155625). On December 24, 2020, decision # 155625 became final without claimant having filed a request for hearing. On February 5, 2021, claimant filed a late request for hearing. On September 10, 2021, ALJ Mott conducted a hearing, and on September 13, 2021 issued Order No. 21-UI-174548, allowing claimant's late request for hearing and affirming decision # 155625. On October 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**. The remainder of this decision relates to the portion of the order under review that concluded that claimant voluntarily quit work without good cause.

**FINDINGS OF FACT:** (1) Atrio Health Plans Inc. employed claimant as a claims administrator from April 27, 2016 until September 1, 2020.

(2) In early 2020, claimant began to feel her mental health deteriorating due to stress associated with the heavy workload at her job. Claimant's stress caused her to lose sleep and appetite, experience changes to her personality, and develop a "constant" headache. Transcript at 20. On a

monthly basis beginning in early 2020, claimant asked the employer to hire more staff or to bring in staff from other departments to reduce claimant's workload, but the employer declined to do either because of budget constraints and the fact that other workers were also "being overworked" and "weren't able to spare any time." Transcript at 24, 25. Approximately once per week beginning in early 2020, claimant saw a chiropractor to relieve her headaches, but she continued getting them despite the treatment.

(3) In May 2020, the employer reassigned some of claimant's tasks to a coworker to try to reduce claimant's workload, but claimant found she had to train and assist the coworker with the tasks, and was distracted from her other duties while doing so. As a result, her stress and associated symptoms remained.

(4) By June 2020, claimant's job required her to work six to seven days a week for an average of 50 to 60 hours per week. This caused claimant's mental health to worsen even more. Claimant requested to use some of her paid time off in June 2020, but the employer denied the request. Claimant took a week of paid time off in July 2020, but found the time off did not improve her stress and associated symptoms.

(5) On or about August 1, 2020, claimant's supervisor quit working for the employer, which further increased claimant's workload because the supervisor's duties were reassigned to claimant. Claimant's increased workload worsened her stress and mental health.

(6) On August 31, 2020, claimant tendered a notice of her intent to quit work effective September 11, 2020. Prior to conveying her notice, claimant did not see a doctor to address her stress and associated symptoms or make use of the employer's employee assistance plan, through which claimant could have met with a counselor by telephone. Claimant did not request a medical leave of absence and did not use all of her accrued paid time off before tendering her notice. Claimant also did not request a transfer to a different position with the employer prior to giving her quit notice.

(7) On September 1, 2020, the employer's human resources (HR) manager sent claimant an email stating that for each day until her last day on September 11, 2020, claimant was expected to document and finish assigned tasks, make a daily progress report to a particular manager, and be responsive to that manager's directions. The email further stated that if claimant failed to follow those work directions, the employer would process her job separation as a job abandonment and terminate her employment. Claimant viewed the email as indicating that the employer intended to terminate her during her notice period. As a result, claimant quit work on September 1, 2020 without working through her notice period.

**CONCLUSIONS AND REASONS:** Claimant quit work without good cause within 15 days of claimant's planned voluntary leaving with good cause.

**Voluntary Leaving.** 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.<sup>1</sup>

The order under review concluded that claimant voluntarily quit work without good cause on September 1, 2020 and was disqualified from receiving benefits effective August 30, 2020. Order No. 21-UI-174548 at 5. The record supports that claimant voluntarily left work without good cause on September 1, 2020. However, the record shows that claimant’s September 1, 2021 voluntary quit without good cause occurred within 15 days of a voluntary leaving planned for September 11, 2020 that was for good cause. For that reason, the record does not support the conclusion of the order under review because, under ORS 657.176(6), claimant is not disqualified from receiving benefits based on the work separation, although she is ineligible to receive benefits for the week including her actual September 1, 2020 quit date.

The record shows that on August 31, 2020, claimant gave notice to quit effective September 11, 2020, but then declined to work through her notice period and instead quit work on September 1, 2020. She quit work on September 1, 2020 because on that date, the employer sent her an email outlining certain work directions and stating that if she failed to follow the directions, the employer would process her job separation as a job abandonment and terminate her employment. Based on that information, claimant quit because she believed the employer intended to terminate her during her notice period.

Claimant quit work on September 1, 2020 without good cause. Although quitting work when discharge is imminent or inevitable in order to avoid harm to one’s reputation or future job prospects may constitute good cause, in this case, the record does not show that discharge was imminent or inevitable based on the employer’s email. The email stated that claimant was expected to document and finish assigned tasks, make daily progress reports to a particular manager, and be responsive to that manager’s directions; claimant faced termination only if those work directions were not followed. Because it is not evident from the record that claimant would have been unable to follow those work directions, claimant failed to show that she would have been discharged and would thereby have suffered harm to her reputation. Accordingly, claimant lacked good cause to quit on September 1, 2020 because she did not face a situation of such gravity that she had no reasonable alternative but to leave work when she did.

**ORS 657.176(6).** That is not the end of the analysis, however, because it is necessary to determine whether ORS 657.176(6) applies to this case. ORS 657.176(6) states, “For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The separation would be for reasons that constitute good cause; (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and (c) The actual voluntary leaving of work occurred no

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<sup>1</sup> A claimant with a permanent or long-term physical or mental impairment, as defined at 29 CFR §1630.2(h), who quits work is subject to a modified standard. A claimant with such an impairment 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’s voluntary leaving is not governed by the modified standard, however, because claimant testified that she did not have any diagnosed health conditions. Transcript at 20.

more than 15 days prior to the planned date of voluntary leaving, then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.”

Claimant quit work without good cause on September 1, 2020, which was within 15 days of claimant’s planned quit on September 11, 2020. Therefore, the applicability of ORS 657.176(6) turns on whether claimant’s September 11, 2020 planned quit was for reasons that constituted good cause.

Claimant’s planned quit was with good cause. Claimant’s situation was grave because her heavy workload caused her mental health to deteriorate and caused her to lose sleep and appetite, experience changes to her personality, and develop a “constant” headache. Transcript at 20. In June 2020, claimant’s stress and mental health deterioration worsened because her job required her to work six to seven days a week for an average of 50 to 60 hours per week. Claimant’s stress and mental health deterioration became worse still after August 1, 2020 because her supervisor quit working for the employer and his duties were reassigned to claimant, which further increased her workload.

The record shows that claimant pursued reasonable alternatives to quitting to no avail. On a monthly basis beginning in early 2020, claimant asked the employer to hire more staff or to bring in staff from other departments to address claimant’s heavy workload, but the employer declined to do either. Approximately each week beginning in early 2020, claimant saw a chiropractor to relieve her stress-induced headaches, but she continued getting them despite the treatment. In May 2020, some of claimant’s work tasks were reassigned to a coworker, but that effort did not lighten claimant’s workload because claimant had to train and assist the coworker with the reassigned tasks, and was distracted from her other duties while doing so.

Although claimant did not see a doctor to address her stress and associated symptoms or make use of the employer’s employee assistance plan, the record indicates pursuing these options more likely than not would have been futile. This is because the source of claimant’s mental health deterioration was her heavy workload, which would have remained regardless of whether she sought treatment from a doctor or met with a counselor by telephone. Similarly, although claimant did not request a medical leave of absence and did not use all of her accrued paid time off before she gave notice of her intent to quit, taking a leave of absence or time off would not have alleviated claimant’s heavy workload, and may have increased her workload upon her return, and so more likely than not would have been futile. Finally, although claimant did not request a transfer to a different position or department prior to giving her quit notice, it is not evident from the record that such an alternative was available because the employer did not raise it as an option despite claimant’s monthly inquiries about hiring more staff and bringing workers in from other departments. Also, the record shows that when claimant asked for workers to be transferred into her department, the employer advised that workers in other departments were also “being overworked” and “weren’t able to spare any time,” which suggests that claimant’s heavy workload would have persisted if she had been transferred, meaning a transfer would likely have been futile. Transcript at 24, 25.

Thus, claimant's quit planned for September 11, 2020 was with good cause and ORS 657.176(6) applies to her work separation. Therefore, claimant's work separation is adjudicated as if the voluntary leaving on September 1, 2020 had not occurred and claimant's planned quit on September 11, 2020 had occurred. For that reason, claimant is not disqualified from receiving benefits based on the work separation. However, pursuant to ORS 657.176(6), claimant is ineligible to receive benefits for the week in which her actual voluntary leaving occurred, the week of August 30, 2020 through September 5, 2020 (week 36-20).

**DECISION:** Order No. 21-UI-174548 is modified, as outlined above.

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

**DATE of Service: November 5, 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.

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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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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