

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1049**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 24, 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 March 21, 2021 (decision # 113840). Claimant filed a timely request for hearing. On November 22, 2021, ALJ Blam-Linville conducted a hearing at which the employer failed to appear, and on November 29, 2021 issued Order No. 21-UI-180581, affirming decision # 113840. On December 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Rihaan Petroleum LLC, doing business as an AM/PM store and gas station, employed claimant from March 10, 2021 to March 22, 2021.

(2) Claimant had post-traumatic stress disorder (PTSD) since approximately 2017, which originated from domestic abuse.

(3) On February 4, 2019, claimant began work with the employer's predecessor company. On May 1, 2020, the owner of the predecessor company promoted claimant from cashier to manager, with an hourly wage of \$16.50. Claimant believed that the owner treated her and the other two female managers "with respect." Audio Record at 28:00 to 28:35.

(4) On March 10, 2021, the ownership of the business was scheduled to transfer to two brothers, one of whom was named "Rav." Audio Record at 21:55 to 22:15. On March 8, 2021, the prospective new owners held a meeting with all of the employees. Rav discussed the employer's rules with the employees, but did not discuss their positions, wages or hours, other than to indicate that they would

remain the same until further notice. Audio Record at 20:25 to 21:10. At the meeting, Rav spoke in a “condescending” manner to everyone, stating, “If you don’t like it then you can go ahead and leave . . . I have plenty of people who want to work for me . . . this job is easy, it’s not rocket science.” Audio Record at 29:00 to 29:40.

(5) Between March 8, 2021 and March 19, 2021, Rav “mock[ed]” claimant and became “upset” while he was asking her why she was performing tasks a certain way. Audio Record at 30:00 to 30:45. Rav criticized claimant by telling her, “[You] don’t know what [you are] doing,” even though he had not explained to claimant how he wanted the tasks performed. Audio Record at 30:00 to 30:45. Rav’s conduct toward claimant was “really affecting” claimant and causing her stress. Audio Record at 30:00 to 30:45. The conduct triggered claimant’s PTSD such that it caused claimant to become concerned about how she would interact with her children. Audio Record at 30:50 to 31:45. Claimant did not tell Rav that his conduct toward her was affecting her mental health because she did not feel comfortable talking to him about her PTSD.

(6) On March 19, 2021, Rav gave claimant her paycheck and told her that he would pay her \$14.00 per hour as a cashier, and that she would no longer be a manager. Claimant responded that she believed she should be paid more than that because she was being required to retain some of her managerial duties. Audio Record at 24:45 to 26:15. Rav declined to increase claimant’s hourly wage.

(7) At the end of her shift on March 22, 2021, claimant told Rav that she was quitting. Claimant quit work because although she retained some managerial duties, she had been demoted from manager to cashier for a reduced wage, and because she wanted to protect her mental health.

**CONCLUSIONS AND REASONS:** Claimant 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). Claimant had post-traumatic stress disorder (PTSD), 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.

Order No. 21-UI-180581 concluded that to the extent that claimant quit work because she was demoted from manager to cashier with a reduction of pay, she quit work without good cause. Order No. 21-UI-180581 at 3. The record supports that conclusion. A claimant who leaves work due to a reduction in pay has left work without good cause unless “the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market area. The median rate of pay in the individual’s labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.” OAR 471-030-0038(5)(d). However, OAR 471-030-0038(5)(d) applies only when the employer reduces the rate of pay

for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment. OAR 471-030-0038(5)(d)(A). Here, because claimant's reduction in pay was the result of claimant's demotion from the position of manager to cashier, OAR 471-030-0038(5)(d) does not apply.

Order No. 21-UI-180581 also concluded that to the extent claimant quit work to protect her mental health, she quit work without good cause. Order No. 21-UI-180581 at 3. The order reasoned that even though claimant's PTSD constituted a permanent or long-term mental impairment, viewed objectively, the owner's treatment of her did not create a circumstance so grave that a reasonable and prudent person with the characteristics and qualities of an individual with PTSD would have concluded that there was no reasonable alternative but to quit. Order No. 21-UI-180581 at 3. The order also reasoned that rather than quitting, claimant had the reasonable alternative of explaining to the owner how his manner of speaking to her negatively affected her PTSD condition. Order No. 21-UI-180581 at 3. However, the record does not support the order's conclusion and reasoning.

The record shows that Rav's treatment of claimant at work created a grave situation for claimant. Claimant's PTSD was triggered by the manner in which Rav spoke to her when he became upset and "mock[ed]" her and criticized her performance without explaining how to perform certain tasks. Claimant was concerned that the PTSD symptoms were "affecting" her mental health and feared that the effect on her mental health would impact her home life. The record also shows that the owner's expectation that claimant perform some managerial duties for less pay than she had received as a manager created an additional stressor for her. Viewed objectively, a reasonable and prudent person with the characteristics and qualities of an individual with PTSD would have concluded that a work environment that triggered their PTSD created a grave situation.

Moreover, the record shows that in claimant's circumstances, there was no reasonable alternative to quitting when she did. Although claimant did not explain to the owner how his manner of speaking to her negatively affected her PTSD condition, the record fails to show that discussing the impact of his conduct on her mental health would have changed his behavior toward her. In his initial meeting with all employees, the owner spoke in a "condescending" manner to everyone there and told them, "If you don't like it, then you can go ahead and leave." More likely than not, speaking to the owner about how his manner of speaking to her had negatively affected her PTSD and mental health would have been futile, and for that reason was not a reasonable alternative to quitting.

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

**DECISION:** Order No. 21-UI-180581 is set aside, as outlined above.

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

**DATE of Service:** January 13, 2022

**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.

**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 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 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 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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