

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0009**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 65334). The employer filed a timely request for hearing. On December 15, 2021, ALJ Ramey conducted a hearing, and on December 17, 2021 issued Order No. 21-UI-182167, reversing decision # 65334 by concluding that claimant quit without good cause and was disqualified from receiving benefits effective September 26, 2021. On December 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Both claimant's and the employer's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the respective parties' reasonable control prevented them 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 the parties' arguments to the extent they were based on the record.

**FINDINGS OF FACT:** (1) McMinnville Gas, Inc. employed claimant as a propane delivery driver from July 19, 2021 until October 1, 2021.

(2) Around 2001, claimant was diagnosed with anxiety disorder. Situations which exacerbated claimant's anxiety could affect his blood pressure and cause him to pass out.

(3) While working for the employer, claimant's duties primarily consisted of delivering propane to rural residences. In order to do so, claimant sometimes had to search large properties to locate the customer's propane tank so that he knew where to park the truck. The employer did not notify customers precisely what day or time their propane delivery would arrive.

(4) Around September 10, 2021, claimant was delivering propane to a customer. The customer initially held a handgun when he approached claimant. Once claimant identified himself, the customer put the

gun away. The customer did not threaten or point the gun at claimant at any point. The encounter made claimant feel “nervous and scared.” Transcript at 7. Claimant did not report the incident to the employer or to law enforcement.

(5) Around September 24, 2021, claimant was driving the propane truck on a rural road in the “middle of nowhere” to deliver propane to a customer. Transcript at 8. While claimant was driving, a man walked out of the trees surrounding the road, pointed a rifle at claimant, and asked claimant why he was in the area. The man, whom claimant believed to be under the influence of an intoxicant, was “belligerent” towards claimant and told claimant that he “shouldn’t be up here.” Transcript at 9. After claimant explained that he was there to deliver propane to a resident, the man eventually relented and walked back into the woods. After the incident, claimant felt “really horrible.” Transcript at 10. When claimant returned to the employer’s premises, he reported the incident to the employer, who “wasn’t happy about it, either.” Transcript at 10. Claimant did not report the incident to law enforcement, as he felt that doing so would be futile, though the employer thought that reporting it to the police would have been “the best way to handle it.” Transcript at 16.

(6) Both of the gun-related incidents in September 2021 contributed to or exacerbated claimant’s anxiety. Additionally, during his deliveries, claimant frequently encountered signs posted on customers’ properties which informed visitors that trespassers would be shot. After the incidents in September 2021, seeing these signs would “raise claimant’s anxiety level.” Transcript at 14. Claimant was also concerned about working conditions on-site at the employer’s facilities, such as workers removing lead-based paint from propane tanks without protective equipment and gas leaks on two of the propane trucks.

(7) On October 1, 2021, claimant voluntarily quit work because he was concerned about his safety while delivering propane, and the effect that those concerns had on his anxiety. Prior to quitting, claimant did not discuss with the employer the possibility of transferring to a different position within the company. If he had done so, the employer may have been able to accommodate his request.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit 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 anxiety disorder, 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 quit work due to the exacerbation of his anxiety caused by two gun-related incidents in September 2021. As exacerbations of claimant’s anxiety could lead to his passing out while driving, this constituted a grave situation. However, claimant did not pursue reasonable alternatives to quitting.

Although claimant's fear of gun-wielding customers, due to the incidents in September 2021 and the signs he frequently saw posted on customers' properties, was reasonable under the circumstances, claimant did not pursue any measures to mitigate that fear or the anxiety it created. For instance, in regards to the September 10, 2021 incident, the customer who wielded the handgun was apparently suspicious of claimant's presence on his property because he had not been expecting claimant's arrival that day. Claimant testified at hearing that the employer's customers did not know when to expect claimant to arrive with propane deliveries. Transcript at 6. However, claimant failed to show that he could not alert a customer of his impending arrival or explain why he did not do so. To the extent that claimant was concerned about similar future incidents, then, it appears that claimant could have prevented further incidents by notifying his customers when to expect his arrivals.

With regard to the September 24, 2021 incident, although the encounter itself was understandably unnerving, the circumstances did not suggest that claimant had reason to believe that other unidentified persons, not related to customers to whom he was delivering propane, would be likely to emerge from wooded areas to threaten claimant on public roads. Although the man who pointed the rifle at claimant that day might have remained a threat if claimant were to return for future deliveries, claimant had the reasonable alternative of filing a report with law enforcement. At hearing, claimant testified that he did not report it immediately because he was in an area without cell phone reception, and that he could have done so after the fact by giving the police "a general area and a description of a person," but that he would have needed to give them "some sort of lead" beyond that information in order for the police to act on the report. Transcript at 14. Claimant did not meet his burden to show that filing a report against the man with the rifle would have had no effect. Additionally, if claimant was concerned about that particular route, the record shows that the employer likely could have assigned him a different route if claimant had requested one—which claimant did not do. Although the employer's witness testified that any other routes would have been through similar types of areas, claimant could have at least avoided the individual he had encountered on September 24, 2021 if he had requested and been given a different route to drive. Transcript at 18.

Further, even if claimant's anxiety was such that he was unable to continue safely driving *any* of the employer's delivery routes, claimant had the reasonable alternative of asking the employer if he could transfer to a non-delivery position within the company, or otherwise be assigned to perform only non-delivery duties. Claimant failed to show that this would not have been a reasonable alternative. At hearing, claimant testified that he was concerned about safety issues on-site at the employer's facility as well, implying that he believed that such an option would not be a reasonable alternative. Transcript at 22–23. However, while claimant's concerns were generally reasonable, he did not show that they were not remediable. For instance, claimant testified that he had observed "people sanding lead-based paint off of propane tanks without any sort of protection." Transcript at 22. Claimant did not, however, testify that the employer did not make ventilators or other protective equipment available to employees or allow them to wear them while performing that work—only that he saw people not wearing them. Similarly, claimant testified that he observed two trucks with propane leaks, but that the drivers of those trucks were unconcerned about the leaks. Transcript at 22. Claimant did not, however, testify that he would have been required to operate a truck with leaking propane, or that the employer would not have addressed the issue if claimant had raised it. Neither did claimant testify that his on-site safety concerns affected his anxiety such that he would have been unable to perform on-site duties. Thus, the preponderance of the evidence shows that requesting reassignment to a different job or different duties

would have been, for a reasonable and prudent person with anxiety disorder, a reasonable alternative to quitting.

For the above reasons, claimant voluntarily quit without good cause, and is disqualified from receiving unemployment insurance benefits effective September 26, 2021.

**DECISION:** Order No. 21-UI-182167 is affirmed.

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

**DATE of Service: February 3, 2022**

**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 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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