

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0022**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 2, 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 August 8, 2021 (decision # 101911). Claimant filed a timely request for hearing. On December 3, 2021, ALJ Ramey conducted a hearing at which the employer failed to appear, and on December 10, 2021 issued Order No. 21-UI-181618, affirming decision # 101911. On December 27, 2021, Claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Carr Construction Inc. employed claimant as an office coordinator from December 19, 2019 until August 11, 2021.

(2) Claimant suffered from bipolar disorder and anxiety.

(3) One of claimant's job duties was to submit invoices to the owner of the employer. The owner was physically imposing, and claimant found him to be intimidating. He yelled at employees frequently, and when he and claimant talked, the owner often interrupted her and was dismissive of her comments. Claimant noticed that when she entered the owner's office to submit invoices, he reacted by sighing loudly and rolling his eyes. Claimant submitted 100 to 200 invoices to the owner per week, and the owner often questioned claimant harshly about aspects of the invoices over which she had no control, such as the amount of money the employer spent on safety equipment or the ratio of apprentice workers to supervisors on a job site.

(4) Beginning in July 2020, claimant's interactions with the owner caused her anxiety to worsen significantly. The anxiety caused an itchy red rash to form on claimant's body that eventually migrated all over claimant's arms, legs, and torso. Claimant sought medical attention for the rash. Claimant's dermatologist diagnosed claimant with nummular dermatitis, determined that claimant's workplace

anxiety caused and worsened the condition, and prescribed steroid medication to treat it. The medication caused claimant to experience hair loss and weight fluctuations.

(5) Between August 2020 and August 2021, claimant talked to her supervisor at least a dozen times about her interactions with the owner, and the anxiety and rash the interactions caused. The supervisor expressed concern but “basically . . . told [claimant] that’s how [the owner] is.” Transcript at 29. In early summer 2021, the supervisor suggested that she begin reviewing claimant’s invoices before claimant presented them to the owner. Thereafter, the supervisor reviewed and gave approval of claimant’s invoices, but claimant found that when she submitted them, the owner continued to yell and raise harsh questions about aspects of the invoices over which she had no control, which continued to worsen claimant’s anxiety.

(6) On August 9, 2021, claimant submitted some invoices to the owner. The owner noticed that one of the invoices reflected an improper ratio of apprentice workers to supervisors on a job site. When the owner saw the improper ratio on the invoice, he yelled at claimant loudly. The owner yelled at claimant so loudly that the yelling was audible 200 feet away, where claimant’s supervisor worked. The encounter gave claimant a severe migraine headache, and she returned to her desk in tears.

(7) On August 10, 2021, claimant called out sick from work. Her migraine headache had persisted and her “level of anxiety [was] so bad that [her] rash was literally head to toe.” Transcript at 25. Claimant determined that she was not “physically and mentally able to do it anymore.” Transcript at 41. That afternoon, claimant sent an email giving notice of her intent to quit effective August 11, 2021. Claimant quit working for the employer as planned on August 11, 2021.

(8) Claimant did not request a transfer to another position prior to resigning because all work for the employer required interaction with the owner regardless of the position. Claimant did not pursue taking a leave of absence prior to quitting because claimant performed essential functions for the employer, so a leave of absence could not be accommodated. Prior to quitting, claimant did not request a meeting with the owner to ask him to change his behavior, or report the owner’s behavior to the Bureau of Labor and Industries.

**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 bipolar disorder and anxiety, 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 an impairment would have continued to work for their employer for an additional period of time.

The order under review analyzed claimant's voluntary leaving under the reasonable and prudent person standard, rather than the modified standard for individuals with a permanent or long-term impairment, and concluded that claimant's situation "was not so grave that a reasonable and prudent person would have had no reasonable alternative but to quit." Order No. 21-UI-181618 at 3. The record does not support that conclusion.

Claimant established good cause for voluntarily leaving work. Claimant quit because her interactions with the owner caused her severe anxiety, which in turn caused her to develop a persistent rash that spread all over her body and required treatment with medications that caused hair loss and weight fluctuation. After receiving harsh treatment from the owner on August 9, 2021, claimant's anxiety level and the condition of her rash were such that she could not physically and mentally continue working for the employer if the owner's behavior did not improve. These facts are sufficient to establish that a reasonable and prudent person with the characteristics and qualities of an individual with bipolar disorder and anxiety would quit work if there were no reasonable alternative.

Prior to quitting, claimant did not request a meeting with the owner to ask him to change his behavior. However, given the owner's tendency to interrupt claimant and dismiss her comments, more likely than not the owner would have not been receptive to changing his behavior. As such, asking him to do so would have more likely than not been futile. This is further supported by the fact that claimant raised the owner's conduct with her supervisor at least a dozen times, which did not produce any change in the owner's conduct, and in response to which the supervisor "basically . . . told [claimant] that's how [the owner] is." Transcript at 29.

Claimant also did not request a transfer to another position or a leave of absence prior to resigning. However, the record shows that pursuing those alternatives would have been futile as well. All work for the employer required interaction with the owner regardless of the position, and therefore a transfer would not have alleviated the problem. Likewise, claimant performed essential functions for the employer so, more likely than not, the employer would not have accommodated a leave of absence, and even if they did, the record does not show that the harsh treatment claimant received from the owner would have abated upon claimant's return from leave.

While claimant did not report the owner's behavior to the Bureau of Labor and Industries prior to leaving work, it is not evident from the record that such a report would have resulted in improving the owner's treatment of claimant. And given the administrative delay of investigating such a report before action could be taken, any action taken by the Bureau of Labor and Industries would not have occurred swiftly enough to address the deterioration of claimant's mental and physical health. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI).

For these reasons, claimant established that no reasonable and prudent person with the characteristics and qualities of an individual with bipolar disorder and anxiety would have continued working for the employer for an additional period of time. Claimant therefore had good cause to quit, and is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 21-UI-181618 is set aside, as outlined above.

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

**DATE of Service: February 4, 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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