

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0174**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 7, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct, which did not disqualify claimant from receiving unemployment insurance benefits (decision # 142341). The employer filed a timely request for hearing. On January 4, 2022, ALJ Meerdink conducted a hearing, and on January 5, 2022 issued Order No. 22-UI-183242, reversing decision # 142341 by concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective May 2, 2021. On January 25, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring 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).

**FINDINGS OF FACT:** (1) Jane's Fabric Patch employed claimant as a retail associate from November 1, 2018 until May 3 or May 4, 2021.

(2) In early March 2021, the employer's owner informed all their employees, including claimant, that they were required to either get vaccinated against COVID-19 or obtain a medical exemption based on a doctor's note. The owner did not set a deadline for employees to meet this requirement.

(3) When the owner announced the requirement, claimant told the owner that she did not intend to get vaccinated. Thereafter, the owner would often urge claimant to get vaccinated, complain to claimant about her unvaccinated status, and would sometimes mention claimant's unvaccinated status to customers. Claimant continued to insist that she would not get vaccinated. The owner's behavior bothered claimant but she continued to work for the employer.

(4) Claimant did not want to receive the COVID-19 vaccine because she had rheumatoid arthritis and thought the vaccine could affect her condition. Despite having rheumatoid arthritis, claimant did not

request a medical exemption from the employer or attempt to obtain a doctor's note to support an exemption request.

(5) On May 3 or May 4, 2021, claimant went to the employer's shop and encountered the owner there. Claimant's husband had had a mild stroke a few days before and the owner wanted to know why claimant had not let her know what was going on with her husband's medical issues. The owner then "just started in" on claimant about being unvaccinated. Audio Record at 16:00. Claimant felt she had endured the owner's complaints for weeks, turned to her coworker, and said, "I can't do it anymore." Audio Record at 16:04. Claimant left the employer's shop and never worked for the employer again.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work 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 rheumatoid arthritis, 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.

To the extent that claimant quit working for the employer because of the owner's comments on May 3 or 4, 2021, claimant quit without good cause. The record does not show that the owner's comments during that incident subjected claimant to abuse, oppression, name-calling, foul language, or threats of physical harm that would have rendered claimant's situation grave.<sup>1</sup> At hearing, claimant explained that during the final incident, the owner "started bitching and [claimant] could not do it anymore." Audio Record at 17:13. However, claimant could not recall many details regarding what the owner stated beyond the owner expressing displeasure that claimant had not informed her about claimant's husband's medical issues and generally complaining about claimant being unvaccinated. Audio Record at 18:31. For her part, the owner testified that she had merely asked claimant if her husband had "had a stroke and how he was doing. And [claimant] just walked out the door with her paycheck." Audio Record at 26:45. Viewed objectively, claimant did not show that no reasonable and prudent person with the characteristics and qualities of an individual with rheumatoid arthritis would have continued to work for their employer for an additional period of time based on the owner's comments on her last day of work.

Moreover, to the extent that claimant felt harassed by the owner's frequent complaints about claimant's vaccination status, claimant had the reasonable alternative to quitting of seeking a doctor's note based on her rheumatoid arthritis condition and requesting a medical exemption from the owner. Had claimant done so, the record shows that she more likely than not would have obtained a doctor's note and then been granted an exemption. The record therefore shows that claimant likely would have met the owner's

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<sup>1</sup> Compare *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not "sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandonin[ing] an oppressive situation will disqualify the worker from unemployment benefits[.]").

requirement of either getting vaccinated against COVID-19 or obtaining a medical exemption based on a doctor's note, and that the owner's complaints about claimant's vaccination status likely would have ceased.

Claimant also failed to establish good cause for voluntarily leaving work to the extent claimant quit working for the employer because she objected to the employer's requirement to either get vaccinated against COVID-19 or obtain a medical exemption based on a doctor's note. The record shows that claimant did not want to receive the COVID-19 vaccine for medical reasons because she had rheumatoid arthritis and thought the vaccine could affect her condition. A vaccination requirement that could worsen claimant's medical condition could have presented her with a grave situation. However, the employer imposed no deadline for claimant to comply with the requirement, so it is not evident from the record that claimant faced a grave situation when she quit because she likely could have continued to decline to comply. Moreover, as mentioned above, claimant had the reasonable alternative of seeking a doctor's note based on her rheumatoid arthritis condition and requesting a medical exemption from the owner. Claimant did not show that requesting a medical exemption was not a reasonable alternative to quitting. The record therefore does not show that no reasonable and prudent person with the characteristics and qualities of an individual with rheumatoid arthritis would have continued to work for their employer for an additional period of time based on the employer's requirement to either get vaccinated against COVID-19 or obtain a medical exemption based on a doctor's note.

For these reasons, claimant voluntarily quit work without good cause and is disqualified from receiving unemployment insurance benefits effective May 2, 2021.

**DECISION:** Order No. 22-UI-183242 is affirmed.

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

**DATE of Service:** March 10, 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**  
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