

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0195**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 27, 2021, 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 September 12, 2021 (decision # 105920). Claimant filed a timely request for hearing. On January 20, 2022, ALJ Blam-Linville conducted a hearing, and on January 25, 2022 issued Order No. 22-UI-184819, modifying<sup>1</sup> decision # 105920 by concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective September 5, 2021. On February 2, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Pappy's Pizza employed claimant as a delivery driver from May 19, 2021 until September 11, 2021. Claimant typically worked six days per week for the employer. The employer did not offer claimant paid time off or other benefits.

(2) Claimant was "born with a crippled left hand," and therefore his left hand was "not usable." Transcript at 11.

(3) Claimant's main duties consisted of delivering pizzas. He was also responsible for "side work," including cutting blocks of cheese with a "piece of wire with two plastic handles." Transcript at 7-8.

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<sup>1</sup> The order under review stated that "the administrative decision mailed October 27, 2021 is *affirmed*." Order No. 22-UI-184819 at 3 (emphasis added). However, as the order under review concluded that claimant's effective disqualification date was different than the date found in decision # 105920, the order *modified* the administrative decision.

(4) Around May or June 2021, claimant began experiencing symptoms of “trigger finger” in his right hand, which limited his use of the hand and eventually made it “impossible” to use. Transcript at 5. Claimant sought advice about the trigger finger condition by calling the nursing advice line available to him through his medical insurance. The nurse told claimant that his options were either “an injection” or surgery, and that it was not likely to improve on its own. Transcript at 6–7. Around late August 2021, claimant began experiencing issues with his Achilles tendon, which impaired his ability to walk. The symptoms of the two medical conditions made it increasingly difficult for claimant to continue performing his duties for the employer.

(5) On September 11, 2021, claimant voluntarily quit working for the employer because his medical conditions prevented him from performing his job duties.

(6) Claimant did not speak to the employer about his medical conditions before he quit. Had he done so, the employer might have been able to offer him an unpaid leave of absence in order to recover. The employer would also have suggested filing a workers’ compensation claim, but claimant had considered this option and decided not to do so, in part because he did not believe that the medical conditions were work-related.

(7) Shortly after he quit, claimant made an appointment with his physician, whom he saw about a month later. Claimant’s physician gave him an injection into the affected finger, and also suggested to claimant that the Achilles tendon issue was likely due to overuse at work. About a month later, the trigger finger symptoms began to improve. Claimant’s symptoms related to his Achilles tendon improved over time.

**CONCLUSIONS AND REASONS:** Claimant voluntarily 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 lifelong lack of use of his left hand, 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 because he developed two medical conditions—trigger finger in his right hand, and an injury to his Achilles tendon—that, compounded with claimant’s lifelong lack of use of his left hand, prevented him from being able to perform his work duties. The order under review concluded that while this constituted a grave reason for quitting, claimant voluntarily quit work without good cause because he did not seek the reasonable alternatives of discussing the matter with the employer or seeking a leave of absence. Order No. 22-UI-184819 at 3. While the record supports the conclusion that claimant’s circumstances were grave, it does not support the conclusion that he failed to seek reasonable alternatives to quitting.

Claimant's circumstances were grave because his medical conditions rendered him unable to do his job. Further, while claimant did not discuss the matter with the employer or seek a leave of absence prior to quitting, the record does not show that either would have constituted reasonable alternatives. At hearing, the employer's witness—the owner of the business—testified that, had claimant informed him of the issue, the employer would have been willing to grant claimant an unpaid leave of absence or would have directed him to file a workers' compensation claim. Transcript at 23. The employer did not indicate, nor does the record otherwise show, that any other options, such as workplace accommodations or modifications of claimant's duties, would have been available to claimant. Thus, the record indicates that taking an unpaid leave of absence or filing a workers' compensation claim were the only alternatives to quitting that would have been available to claimant.

Taking a leave of absence would not have constituted a reasonable alternative to quitting. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension). Here, claimant received no benefits through his employment and any leave granted to him would have been unpaid. Although claimant's conditions ultimately did eventually improve—one with rest, and the other with medical treatment—the record does not show that claimant could reasonably have predicted how long such improvement would take. Therefore, any leave of absence he could have taken would have been unpaid, indefinite, and likely protracted, and not a reasonable alternative to quitting.

Similarly, filing a workers' compensation claim would not have been a reasonable alternative to quitting. Claimant testified at hearing that, in addition to being concerned about the employer incurring the expense of a workers' compensation claim, he did not file one because he did not believe that his conditions were work-related. Transcript at 27. Although claimant's physician later suggested that claimant's Achilles tendon injury was the result of work-related overuse, the record does not show a correlation between work and claimant's trigger finger condition. Without further supporting evidence, the preponderance of the evidence does not show that claimant would have been approved for a workers' compensation claim and eligible for benefits had he filed a claim. Therefore, filing a claim would likely have been futile, and thus would not have been a reasonable alternative to quitting.

Because claimant quit work for a reason of such gravity that he had no reasonable alternative but to quit, he voluntarily quit work with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-184819 is set aside, as outlined above.

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

**DATE of Service:** April 5, 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.

**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.

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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 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  
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