

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0357**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 28, 2022, 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 January 9, 2022 (decision # 102143). Claimant filed a timely request for hearing. On March 1, 2022, ALJ Murdock conducted a hearing, and on March 3, 2022 issued Order No. 22-UI-187846, affirming decision # 102143. On March 10, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare 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). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Newberg Natural Health Center employed claimant as a clinician's assistant from March 2019 until January 13, 2022. The employer's clinic was staffed by the owner (an acupuncturist), claimant, and an office manager. The owner spent most of his working time in the treatment room at the back of the clinic, while claimant and the office manager spent most of their time in the lobby and at the front desk. The employer did not employ anyone to handle personnel issues.

(2) As part of claimant's compensation package, the owner provided claimant with acupuncture treatment for various medical concerns. Some of the treatment that the owner provided to claimant was related to gynecological conditions. As such, claimant and the owner discussed matters of claimant's sexual health in the course of her treatment.

(3) Claimant did not elicit frank sexual discussions with the owner outside of the scope of her treatment in the clinic. Nevertheless, the owner frequently engaged, or attempted to engage, claimant in explicit discussions of a sexual nature. For instance, the owner would sometimes volunteer details of his sex life

with his wife, or make unsolicited suggestions to claimant about sexual acts she might engage in with her husband. Claimant was uncomfortable with these explicit discussions and did not engage with the owner. Prior to resigning, claimant did not inform the owner that she was uncomfortable with his explicit sexual discussions because she “knew he would act the way he did when [she] did tell him” and she “needed the job plain and simple.” Transcript at 54.

(4) In response to the COVID-19 pandemic, the owner permitted claimant and the office manager to hang signs in the clinic informing patients that they were required to wear facemasks in the lobby and at the front desk. However, the owner himself did not enforce the mask mandate inside the treatment room, did not “agree philosophically with the mask wearing,” and refrained from wearing a mask while treating patients who were also unmasked. Transcript at 27.

(5) On or around December 29, 2021, a patient emailed the clinic stating that “she had been very sick with COVID[-19] for 11 days” and requesting that she see the owner for treatment before going to the hospital. Transcript at 7. The owner subsequently agreed to schedule the patient for treatment. Thereafter, claimant insisted that the owner wear a mask while treating the patient, but the owner refused to do so, and told claimant that she was “living in fear and being brainwashed.” Transcript at 7. The owner’s refusal to wear a mask made claimant feel unsafe working at the clinic.

(6) Shortly after this incident, claimant notified the owner that she intended to resign in about a week and a half. Claimant decided to quit due to the owner’s refusal to wear a mask around a patient who was sick with COVID-19, as well as the owner’s habit of attempting to engage claimant in sexually explicit conversations. When claimant tendered her resignation, she told the owner that his sexually explicit talk made her uncomfortable. Claimant also suggested to the owner that, when he hired claimant’s replacement, he should consider changing his behavior instead of being “so sex casual in the work environment.” Transcript at 9. The owner responded by stating that he would not change his behavior. Between the date on which claimant gave her notice and her last day of work, the owner largely avoided interacting with claimant in order to avoid saying something that might offend or upset her.

(7) Claimant last worked for the employer on January 13, 2022. The owner gave claimant a paid day off on January 14, 2022.

**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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

Claimant voluntarily quit work because of the owner’s refusal to wear a facemask while treating a patient with COVID-19, which made her feel unsafe, as well as the owner’s long-standing habit of

attempting to engage claimant in sexually explicit discussions at work. The order under review concluded that claimant quit because she “disliked actions or comments by the owner,” and that these “actions or comments” did not constitute good cause for leaving work in light of the reasonable alternatives to quitting that were available to her. Order No. 22-UI-187846 at 3–4. The record does not support that conclusion.

As a preliminary matter, the record shows that the incident in late December 2021, in which the employer agreed to treat a patient who was sick with COVID-19, while also refusing to wear a mask, was the final incident that led claimant to quit. The order under review concluded that this incident did not constitute a reason of such gravity that claimant had no reasonable alternative but to quit because claimant could have continued to work for the employer until she found another job or “absented herself from work” on the date of the COVID-19 patient’s appointment. Order No. 22-UI-187846 at 3. In so concluding, the order under review ignores the wider context of the owner’s disregard for claimant’s safety. The record shows that the owner refused to wear a mask while working, even while treating a patient who was infected with COVID-19. It is reasonable to infer from these circumstances that the owner easily could have become infected with COVID-19 in the course of treating the patient. Thus, even if claimant had “absented” herself from work on the date of that appointment, it still follows that she would have been at heightened risk of contracting COVID-19 from the owner upon her return to work. In light of the owner’s disregard for safety protocols when dealing with COVID-19, the record shows that claimant faced a grave situation for as long as she continued to work for the employer while the pandemic persisted.

Further, the record shows that claimant had no reasonable alternatives but to quit when she did. The Oregon Court of Appeals has held that continuing to work under grave circumstances until other work has been found is not a reasonable alternative to quitting. *See Hill v. Employment Dep’t.*, 238 Or App 330, 243 P3d 78 (2010) (continuing to work until claimant has found other work is not a reasonable alternative to quitting work); *see accord Warkentin v. Employment Dep’t.*, 245 Or App 128, 261 P3d 72 (2011); *Campbell v. Employment Dep’t.*, 245 Or App 573, 263 P3d 1122 (2011); *Strutz v. Employment Dep’t.*, 247 Or App 439, 270 P3d 357 (2011); *Campbell v. Employment Dep’t.*, 256 Or App 682, 303 P3d 957 (2013). Likewise, the record shows that claimant attempted to discuss the matter with the owner and urged him to wear a mask, which he refused, and that the owner was broadly and adamantly opposed to wearing masks or taking other standard precautions against COVID-19 to the point that he called claimant “brainwashed” due to her safety concerns. The record further shows that employer did not employ anyone else to handle personnel matters, such that claimant could have, for instance, made a complaint to human resources. Therefore, to the extent that claimant quit in response to the owner’s agreement to treat a COVID-19 patient without wearing a mask, claimant has met her burden to show that she quit for a reason of such gravity that she had no reasonable alternative but to quit.

To the extent that claimant quit work due to the owner’s long-standing habit of discussing sexually explicit matters with claimant, claimant also voluntarily quit work with good cause. While claimant endured the situation for some time, claimant was uncomfortable with the employer’s unsolicited discussions of his sex life and claimant’s—a scenario that can reasonably be construed as sexual harassment.<sup>1</sup> A scenario in which the owner of a business habitually engages in sexually harassing

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<sup>1</sup> The Oregon Bureau of Labor and Industries defines sexual harassment to include “continued or repeated language of a sexual nature.” *See* <https://www.oregon.gov/boli/workers/Pages/sexual-harassment.aspx>

behavior towards an individual constitutes a grave reason for quitting. Further, while claimant did not talk to the owner about the behavior before she gave her notice of resignation, the record shows that doing so would, more likely than not, have been futile. First, when claimant discussed the matter with the owner when she gave her notice, the owner's response indicated that he would continue to behave in such a manner with whomever he hired to replace claimant. Second, while the owner could have merely refrained from discussing sexually explicit matters with claimant for the last week and a half or so of her employment, he instead largely avoided talking to her entirely during that time, suggesting that the owner did not know how to talk to claimant without making her uncomfortable. Therefore, to the extent that claimant quit due to the owner's habit of discussing sexually explicit matters at work, claimant quit work for good cause because she had no reasonable alternative available but to quit.

For the above reasons, claimant 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-187846 is set aside, as outlined above.

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

**DATE of Service:** May 19, 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](http://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.