

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0382**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 19, 2022, 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 # 91156). The employer filed a timely request for hearing. On March 1, 2022, ALJ Kaneshiro conducted a hearing, and on March 2, 2022 issued Order No. 22-UI-187623, affirming decision # 91156. On March 17, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Lane County employed claimant as a court liaison from September 7, 2021 until December 8, 2021. Claimant was subject to a six-month probationary period when he began working for the employer.

(2) About four years before he began working for the employer, claimant was diagnosed with panic disorder. Claimant's condition caused him to experience anxiety. Additionally, it sometimes led him to suffer from panic attacks, which were triggered when claimant was in confined spaces. Claimant received medical care for his condition and treated it with medication.

(3) Claimant's position required him to work primarily in an office located within a jail, which claimant knew at the time he was hired. During the first several weeks of claimant's employment, while he was training, claimant worked at an office that was not located at the jail.

(4) In October 2021, after his training was complete, claimant was assigned to work at a jail office, where he was required to spend most of his working hours. The office in the jail was enclosed, had no windows, and was behind three separate sets of secured doors. Working in such an environment caused claimant to experience panic attacks, which did not subside until claimant left the enclosed space.

Claimant was unable to complete his work while experiencing a panic attack. On multiple occasions, claimant told his supervisor that he did not like working in the jail office. However, claimant was not eligible to transfer out of his position or move to a different office until after he completed his six-month probationary period.

(5) Around the same time that he began working at the jail office, claimant ran out of his anxiety medication. Claimant subsequently attempted to renew his medication, but was unable to do so without a primary care physician to prescribe for him, and was unable to find a doctor in his area who was accepting new patients. Due to his mental health condition and the exacerbating effects that resulted from working at the jail office, and now without medication, claimant called out from work on several occasions.

(6) On November 19, 2021, claimant's supervisor notified him that he had nearly exhausted his accrued paid time off. The supervisor also notified claimant that he might have been eligible for unpaid leave under the Oregon Family Leave Act (OFLA), and provided claimant with contact information for the employer's leave administrator. However, when claimant called the leave administrator, they informed him that he was not eligible for OFLA leave. Additionally, claimant was not eligible for Family Medical Leave Act (FMLA) leave, as he had not yet worked for the employer for 12 months.

(7) On November 24, 2021, claimant gave the employer two weeks' notice of his intent to resign. For most of the following two weeks, claimant worked at the employer's other office, rather than the jail office. On December 8, 2021, claimant quit working for the employer because working in the enclosed environment of the jail office triggered his panic attacks.

(8) At the time that claimant quit, the employer did not have any other open positions for which he could have transferred. Claimant had less than one full hour of paid sick time remaining to him at the time he quit.

**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 panic 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 because his primary work environment—a windowless office in a jail, secured behind three sets of doors—triggered his panic disorder and caused him to experience panic attacks. The record shows that these panic attacks impacted claimant's ability to perform his work, and were only alleviated when claimant left the confined space of the jail office. Because claimant's work

environment exacerbated a chronic medical condition to the point that he had difficulty performing his job, claimant quit for a reason of such gravity that a reasonable and prudent person would have quit if there were no reasonable alternative.

Claimant had no reasonable alternative but to quit. At hearing, the parties offered conflicting accounts of how well claimant communicated the problem to his supervisor. While claimant testified that he “let [his supervisor] know that [he] was having severe anxiety,” claimant’s supervisor testified that claimant never told her about his anxiety and that she was unaware of it. Transcript at 13–14; 23. Regardless of whether claimant explicitly informed his supervisor of the medical condition from which he was suffering, however, the record shows that doing so would not have yielded results sufficient to keep claimant employed without further triggering his condition.

It is not clear from the record how long claimant might have had to wait in order to find a new primary care physician in order to obtain a refill for his anxiety medication, or whether the medication would have sufficiently alleviated his anxiety such that he could continue to work at the jail office. Even if medication could have eventually alleviated the problem, however, it was not immediately available to claimant, and it is clear from the record that claimant was unable to continue working in the jail office while unmedicated. To the extent that claimant might have been able to take medical leave until he was once again medicated—though the record shows that he was not eligible for either FMLA or OFLA leave—doing so would not have been a reasonable alternative to quitting because any such leave likely would have been unpaid,<sup>1</sup> except for the fraction of an hour of sick leave that remained when claimant quit. The record also shows that the employer required claimant to work in the jail office for the majority of his working hours; and that at the time that claimant quit, he would not have been eligible to transfer to another position for several months. Claimant therefore had no reasonable alternative but to quit. As such, claimant quit with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-187623 is affirmed.

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

**DATE of Service:** June 2, 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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<sup>1</sup> *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).

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**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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