

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0416**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 24, 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 15, 2021 (decision # 143230). Claimant filed a timely request for hearing. On March 1, 2022, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on March 9, 2022 issued Order No. 22-UI-188188, affirming decision # 143230. On March 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Claimant was employed as a social service worker by the employer from February 15, 2013 to August 16, 2021. At the time of the work separation, claimant worked in the field of child welfare and was the lead worker for the Addiction Recovery Team (ART) program. Claimant's work was inherently stressful.

(2) Claimant believed that because of her union activities, she was the target of bullying, harassment, and retaliation by the employer. Claimant's concerns about retaliation included being moved to a building with contract workers where no other state employees were housed, being called to multiple

disciplinary meetings for lack of professionalism in which the allegations were later found to be unsubstantiated and dismissed, and, in April 2021, being invited to a meeting during which the employer attempted to demote claimant.

(3) In May 2020, claimant became an elected officer of the union. Claimant believed the bullying, harassment, and retaliation efforts intensified. Claimant also believed that her union positions afforded her some protection against the employer's retaliation efforts.

(4) Approximately ten years prior, claimant was diagnosed with fibromyalgia. Claimant's fibromyalgia flared up under stress. In claimant's last year of employment, claimant was experiencing severe muscle and joint pain. Transcript 50-52. Claimant also had celiac disease, which she controlled through following a strict diet. Claimant experienced digestive pain because of her health conditions and the medications used to treat them. Transcript at 50-52. Claimant also had asthma and used a rescue inhaler.

(5) Beginning in early 2020, claimant began suffering from migraine headaches, which would sometimes also cause her to be sick to her stomach. Claimant also began having trouble sleeping and was sometimes not able to fall asleep at all. Claimant attributed the migraines and trouble sleeping and worsening fibromyalgia symptoms to the stress of her job, and sought medical care. Claimant was prescribed medication for the migraines and for the nausea that accompanied them. Transcript at 47-48.

(6) In May 2020, claimant began seeing a licensed clinical social worker for anxiety and to learn additional coping mechanisms for managing stress. Transcript at 46. By late July 2020, claimant felt she had reached her "breaking point" with her mental and physical health, and "couldn't do it any longer." Transcript at 66.

(7) Before quitting work, claimant did not use her available vacation or sick leave because she believed this would prompt the employer to "build a case" against her. Claimant did not seek protected leave under the Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA) because she believed there was a stigma attached to taking a medical leave of absence. Claimant also believed employees who take medical leave were either fired or resigned upon their return to work. Transcript at 104-105. Claimant had exhausted most of her sick leave by the time submitted her resignation. Transcript at 108.

(8) On August 2, 2021, claimant notified the employer in writing that she was quitting work in two weeks. Claimant worked through her two-week notice period. On August 16, 2021 claimant cashed out approximately one and a half months of vacation pay.

**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). In

addition to the migraine headaches and anxiety claimant was experiencing, claimant had previously been diagnosed with celiac disease and fibromyalgia. These health conditions constitute a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h).<sup>1</sup> 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.

Order No. 22-UI-188188 concluded that claimant quit working for the employer without good cause. The order reasoned that even if claimant had permanent or long-term physical and/or mental impairments, the medical evidence was insufficient to show that her health was in danger of immediate harm and concluded that claimant was not facing a situation of gravity in terms of her health. In addition, Order No. 22-UI-188188 reasoned that even if claimant were facing a grave situation, she had reasonable alternatives to quitting work when she did. Order No. 22-UI-188188 at 3. However, the record does not support the order’s conclusion or reasoning.

The employer did not appear at the hearing and the only evidence on the factors that caused claimant to leave work were those presented by claimant. On this record, it is unrebutted that claimant suffered from various impairments and that the stress claimant was suffering from was worsening those impairments. Claimant was experiencing worsening joint and bone pain, migraines, digestive issues, anxiety, and at times was unable to fall asleep all night. As a result of claimant’s deteriorating mental and physical health, claimant sought medical help from her doctor and a licensed clinical social worker. Claimant was taking prescription medication and was attending therapy sessions in an effort to alleviate her health symptoms and learn additional skills to cope with stress. Claimant was in therapy for approximately three months before submitting her resignation. Despite claimant’s efforts, her mental and physical health continued to suffer, which claimant attributed to her job-related stress. This created a grave situation.

The order under review suggests that claimant could have taken paid time off, or resigned from her union activities, as reasonable alternatives to leaving work. However, the record does not indicate that claimant’s underlying work conditions would have changed or otherwise improved upon claimant’s return to work after a leave of absence. The record shows that using paid time off work likely would have been futile because claimant would have returned to the same conditions that were causing her physical and mental health deterioration. Moreover, claimant had exhausted her sick leave by the time she quit work and cashed out her vacation pay, thereby not losing those benefits by leaving work when she did. Therefore, using paid time off was not a reasonable alternative to quitting. The order also suggests claimant could have resigned from her union activities, thus reducing her stress and potentially improving her health conditions. Claimant’s resignation from her union activities, on this record, however, was not a reasonable alternative to quitting work because claimant testified her union activities

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<sup>1</sup> 29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

provided protection from the employer's underlying efforts to retaliate against claimant. Therefore, resigning from the union activities would not have alleviated the primary source of claimant's work-related stress and resulting health issues, but may have further exacerbated them. Claimant therefore had no reasonable alternative but to quit work.

For the above reasons, claimant voluntarily quit working for the employer with good cause, and is not disqualified from receiving unemployment insurance benefits based on the work separation.

**DECISION:** Order No. 22-UI-188188 is set aside, as outlined above.

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

**DATE of Service:** June 10, 2022

**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.

**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.

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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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