

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0423**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 7, 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 # 134440). The employer filed a timely request for hearing. On March 22, 2022, ALJ Lucas conducted a hearing, and on March 23, 2022 issued Order No. 22-UI-189529, affirming decision # 134440. On March 29, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) McKay Cottage Restaurant employed claimant from September 27, 2021 until January 14, 2022.

(2) During claimant's tenure with the employer, claimant tried working in multiple positions. Claimant tried the bus person position, which caused her to cry on her first day of work because she was physically unable to perform the position. Claimant also tried the food running position, but after a few days of trying, was unable to physically perform the position. Claimant then started hosting, which was the only other position claimant was eligible to perform for the employer because of her age. Transcript at 22-23.

(3) In 2010, claimant was diagnosed with depression and anxiety. Claimant's anxiety manifests through crying. Transcript at 42-43, 47.

(4) In 2013, claimant was diagnosed with attention-deficit/hyperactivity disorder (ADHD). Transcript at 43.

(5) In 2019, claimant was diagnosed with hypermobility disorder. Hypermobility disorder causes the claimant's joints to hyper flex and/or dislocate. Transcript at 43-44.

(6) During claimant's tenure, she cried during work on more than one occasion, as noted in the manager's notebook. Transcript at 59, 60.

(7) On January 14, 2022, claimant and the employer had a meeting at the restaurant in an office. Claimant began to cry during the meeting. The employer believed it was a calm conversation, but the claimant was "very upset" and was crying. The employer told her, "no crying." Claimant believed the employer was calling her a "crybaby." Claimant had an anxiety attack, told the employer, "I can't do this right now," and left the office crying. Shortly after, claimant returned to the office asking for her tips, and then left the restaurant. Transcript at 10, 50-51.

(8) On January 15 through January 17, 2022, claimant was scheduled to work each day, but did not report to her scheduled shifts.

(9) On January 18, 2022, claimant sent the employer a text message and requested her last check and tips. Claimant did not work for the employer again.

**CONCLUSIONS AND REASONS:** Claimant 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 anxiety, depression, ADHD, and hypermobility disorder, permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h).<sup>1</sup> A claimant with impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for their employer for an additional period of time.

At hearing, both claimant and the employer characterized claimant as a very sensitive person. Although claimant only worked for the employer for a few months, she cried during work on more than one occasion. Regardless of whether the employer called claimant a "crybaby" or raised her voice during the final incident, it is undisputed that claimant was crying during her final meeting with the employer, and

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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.

claimant testified she experienced an anxiety attack. Before working as a host, claimant had unsuccessfully tried working several positions for the employer, and was ineligible to work in any other positions due to her age. Further, the employer characterized the work environment as a “very fast-paced restaurant” and stated, “it’s hectic and somebody who has anxiety, it may not be the best fit for them.” Transcript at 58. In light of the totality of the circumstances, claimant established by a preponderance of the evidence that it was reasonable for her to believe, as an individual suffering from depression, anxiety, ADHD, and hypermobility disorder, that she faced a grave situation at work and had no reasonable alternatives but to leave work when she did.

For the above reasons, claimant 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-189529 is affirmed.

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

**DATE of Service: June 15, 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.

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