

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0534**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 17, 2022, 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 February 13, 2022 (decision # 75721). Claimant filed a timely request for hearing. On April 15, 2022 and April 25, 2022, ALJ Murdock conducted hearings, interpreted in Vietnamese, and on April 28, 2022, issued Order No. 22-UI-192459, affirming decision # 75721. On May 2, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted two written arguments, one on May 2, 2022, and another on May 12, 2022. EAB did not consider claimant's May 2, 2022 argument because claimant did not declare that they provided a copy of their May 2, 2022 argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The May 12, 2022 argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the claimant's reasonable control prevented them 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). EAB considered the claimant's May 12, 2022 argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) The Oregon Department of Environmental Quality employed claimant as an accounting technician from May 6, 2019 to February 14, 2022. Claimant is an Asian-American woman.

(2) Claimant's job responsibilities included opening the employer's mail, sorting the mail, processing the mail, and endorsing any bank checks that were mailed to the employer. Claimant performed these mail-related duties with one of the employer's receptionists. Claimant had also negotiated with a former manager to work from home on Wednesdays.

(3) In early January 2022, the employer hired a new manager whose responsibilities included supervising claimant. Shortly after the new manager was hired, claimant complained to the new manager

that one of her accounting technician coworkers, a white male, had failed to endorse five checks while sorting mail.

(4) On January 13, 2022, the employer changed the mail sorting procedure with plans to officially roll out the procedure later that month. Under the new procedure, either the accounting technician or the receptionist would remove the contents of each envelope, while the other person watched. Claimant's manager told claimant that the new procedure was being implemented as an "internal control," asked claimant to immediately adopt the new procedure even though it had not been formally implemented, and told claimant that she had developed the new procedure with the same white male accounting technician claimant had previously complained about. April 15, 2022 Transcript at 7. Claimant was uncomfortable with the new procedure because "[t]he receptionist only sat there and looked at me while I was opening the mail." April 15, 2022 Transcript at 6-7.

(5) Claimant's manager also informed claimant that as of January 13, 2022, claimant would no longer be allowed to work remotely from her home on Wednesdays. Claimant believed that her manager's efforts to change the mail sorting procedure and rescind her ability to work from home on Wednesdays were retaliation for her complaint against her coworker whom the manager had "showed a lot of interest towards . . . maybe protected him and just like[d] him." April 15, 2022 Transcript at 10.

(6) Claimant experienced negative effects to her health, including stress and depression, due to the changes to the mail sorting procedure and her manager's decision to revoke her ability to work remotely on Wednesdays. Claimant did not seek medical care to address these health effects. Claimant believed her manager implemented the changes with a discriminatory intent related to claimant's female Asian-American status and as retaliation for claimant's complaint against the white male coworker. Claimant could have, but did not, filed a discrimination complaint with the employer's human resources (HR) department, her labor union, or the Department of Administrative Services. Claimant also did not avail herself of the employer's "Speak-up" tool, which was an anonymous complaint filing option.<sup>1</sup> April 25, 2022 Transcript at 33.

(7) On February 7, 2022, the employer emailed claimant to notify her that she may have been exposed to COVID-19 due to close contact with a symptomatic coworker. The email advised claimant she should not report to work if she experienced any symptoms. Claimant continued to report to work because she experienced no symptoms. Three days later, claimant spoke to a white coworker who told claimant that they too had recently had close contact with an individual who had tested positive for COVID-19 and experienced no COVID-19 symptoms. The white coworker told claimant that unlike claimant, they were asked by claimant's manager to work from home for ten days.

(8) On February 11, 2022, the manager and an HR representative delivered a non-disciplinary memorandum of expectations (MOE) to claimant. The MOE stated that it was being given to reinforce claimant's work performance and it listed four expectations that the employer expected claimant to meet going forward. The MOE also acknowledged claimant's desire to work remotely, but clarified that claimant's position required her to be physically present at work to process checks received in the mail. The MOE included a space for claimant's signature and stated, "Employee's signature confirms only

---

<sup>1</sup> The employer's discrimination policy allowed the employer to refer any employee discrimination complaint to an outside contractor for investigation where the employer believed doing so would increase the appearance of fairness in the investigatory process.

that the supervisor has discussed and given a copy of the material to the employee, and does not indicate agreement or disagreement.” Exhibit 17 at 1.

(9) On February 14, 2022, claimant submitted to the employer a statement which rebutted each expectation raised in the MOE, and which informed the employer that claimant would not sign the document. Claimant also submitted to the employer, by separate writing, a complaint alleging discrimination based on claimant’s status as a minority female. Claimant’s discrimination complaint only referenced the difference in treatment she believed the employer exhibited towards her, versus a white male coworker, with respect to COVID-19 isolation-at-home procedures. Claimant also submitted to the employer a written resignation, effective immediately, which identified the MOE as an unjustified tool the employer had used as a precursor to claimant’s future discharge and “the last straw that broke the camel’s back.” Exhibit 16 at 2.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work without 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 quit work after she received the MOE from the employer, which claimant believed was unjustified and which claimant identified as “the last straw that broke the camel’s back.” However, the record shows that claimant also quit because she believed she had been the victim of retaliatory acts from the employer that she believed reflected favoritism toward white employees and discrimination towards her due to her minority female status. As to the MOE, however, the record shows that claimant did not face a grave situation leaving her no reasonable alternative but to leave work when she did. Although claimant may have viewed the MOE as the precursor to an eventual discharge, the record shows that the MOE threatened no future disciplinary action, nor was that the employer’s intent, and that the MOE was designed to reinforce claimant’s work performance. The employer’s goal was a reasonable employer objective and, under the circumstances presented, no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work based on the receipt of this type of MOE document. Furthermore, even if claimant faced a discharge or potential discharge for misconduct based on receiving the MOE, which the record shows she did not, resigning to avoid a discharge for misconduct would not constitute good cause. *See* OAR 471-030-0038(5)(b)(F) (“Leaving work without good cause includes . . . Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge[.]”).

To the extent claimant quit work because she believed the employer had committed retaliatory and discriminatory acts against her based on her minority female status, claimant may have faced a grave situation. The record evidence raises arguable concerns about preferential treatment toward certain

workers at the expense of claimant. However, the record also includes evidence that suggests that each of the employer's actions identified as discriminatory by claimant might have instead been motivated by the employer's legitimate business interests and with no discriminatory intent.<sup>2</sup> Even if it is assumed that claimant faced a grave situation, the claimant did not avail herself of the multiple avenues to address her concerns before leaving work. For example, the record shows that claimant could have filed discrimination complaints with the employer's HR department, her labor union, or the Department of Administrative Services and that she had the option of doing so anonymously via the employer's "Speak-up" tool. In addition, the employer's witness testified that the employer's discrimination policy included provisions allowing certain complaint-based discrimination investigations to be handled by an outside contractor where there might be concerns over the appearance of partiality by the employer. April 25, 2022 Transcript at 33.

The record shows that claimant *did* file a discrimination complaint with the employer, but did so on the day she resigned, thereby not affording the employer a reasonable opportunity to investigate the allegations she had raised. While the law recognizes that in some circumstances good cause to quit may exist, notwithstanding a pending investigation, because of the unreasonableness of expecting a claimant to endure a continuing hostile work environment while the investigation occurs,<sup>3</sup> the record does not lead to such a conclusion in this case. As has been noted, the record raises questions as to whether claimant faced any discrimination from the employer. Furthermore, although claimant may have suffered adverse health effects from her work circumstances, it is notable that those adverse health effects did not compel her to seek medical care. As such, and under the totality of the circumstances presented, the record shows that claimant had the reasonable alternative of allowing the employer to investigate her discrimination complaint, instead of immediately quitting after she filed the complaint.

For these reasons, claimant voluntarily quit work without good cause and is therefore disqualified from receiving unemployment insurance benefits effective February 13, 2022.

**DECISION:** Order No. 22-UI-192459 is affirmed.

D. Hettle and A. Steger-Bentz;

S. Serres, not participating.

---

<sup>2</sup> Claimant testified that when her new manager came to work for the employer she implemented "a lot of change," which contributed to claimant's feelings of discrimination and caused her stress and depression. April 25, 2022 Transcript at 31. However, it is not uncommon or unreasonable for a new manager in an employment setting to implement changes that the manager deems necessary in an attempt to improve work production and efficiency and there is nothing in the record to suggest the new manager did not have this authority. Thus, it is not *per se* unreasonable, nor necessarily reflective of any discriminatory intent, that the new manager would determine that claimant's mail sorting responsibilities required her to physically be at work five days a week. Likewise, the record includes evidence indicating that, as opposed to being a form of discrimination, the new mail sorting procedure implemented by the employer was an effort to be in "compliance with state requirements," was imposed equally on multiple employees and not targeted solely at claimant, and occurred after the manager became aware of errors in the handling of the mail. Exhibit 6 at 1, Exhibit 7 at 2.

<sup>3</sup> *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (where unfair labor practices have ceased and the only remaining dispute between claimant and the employer is the resolution of the past issues, it was reasonable for claimant to continue working for the employer while litigating the claim).

**DATE of Service: July 22, 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.

**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>. If you are unable to complete the survey online and wish to have 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 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.