

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1149**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 12, 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 August 7, 2022 (decision # 141107). Claimant filed a timely request for hearing. On October 26, 2022 and continued on October 27, 2022, ALJ Goodrich conducted a hearing, and on October 31, 2022 issued Order No. 22-UI-206243, affirming decision # 141107. On November 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted written arguments on November 18, 2022 and on December 6, 2022. EAB did not consider claimant's November 18, 2022 written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his November 18, 2022 argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's December 6, 2022 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 him 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 December 6, 2022 argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Multnomah County employed claimant as a licensed electrician from June 24, 2020 until August 12, 2022. Claimant was a 35-year old African American man. Over the course of his employment, claimant suspected that the employer treated him unequally compared to other electricians based on his age and his race.

(2) In late December 2021, claimant organized a teleconference meeting with the employer's other electricians to discuss a recurring issue and how to resolve it. Claimant did not need the employer's permission to call the meeting. However, when claimant called the meeting, claimant's lead electrician was away and had not specifically authorized it.

(3) Shortly thereafter, the lead electrician met with claimant and informed him that the fact claimant called the meeting made the lead electrician upset. The lead electrician stated that he felt the job was not working out for claimant and offered to write claimant a letter of recommendation for another job. Claimant declined the lead electrician's offer of a letter of recommendation and stated he did not plan to quit.

(4) The lead electrician was responsible for assigning claimant's work assignments. After the lead electrician and claimant met, claimant found that the quality of his work assignments fell significantly. Claimant found that he was assigned work that involved little to no actual electrician work, such as changing batteries in a clock. Claimant believed his poor quality work assignments were retaliation and was an example of disparate treatment he experienced from the employer. Claimant brought up the quality of his assignments with the lead electrician, but nothing changed. Claimant raised his concerns about the quality of his assignments with his union representatives. Claimant's union representatives talked to the lead electrician about the matter. One of claimant's union representatives also raised the matter with claimant's manager. The manager responded that he heard what the union representative was saying, but did not commit to doing anything. Despite these efforts, the quality of work the lead electrician assigned claimant did not improve.

(5) In early March 2022, claimant raised his concerns about not receiving electrician quality assignments in an email to his manager. The manager held a meeting with claimant and advised him that he would probably get more work "if [he] showed up to work[.]" October 26, 2022 Transcript at 17. The manager's response troubled claimant because claimant did not have any attendance problems and had always properly communicated when he needed time off. Unbeknownst to claimant, the manager did contact the lead electrician and asked the lead electrician to make sure that he was assigning appropriate work to claimant. The manager made the employer's Human Resources (H.R.) department aware of claimant's concerns and the manager's effort to reach out to the lead electrician. The quality of work the lead electrician assigned claimant did not improve.

(6) Also in early March 2022, claimant's doctor diagnosed claimant with clinical depression and clinical anxiety. The conditions were caused in part by the manager's response when claimant raised his concerns and by claimant's perception that he was receiving disparate treatment based on the quality of his work assignments. Claimant's therapist encouraged claimant to quit his job for his health. On March 15, 2022, claimant took a leave of absence under the Family and Medical Leave Act (FMLA) to address his conditions.

(7) On June 15, 2022, claimant's conditions stabilized and he returned to work, although he continued taking medication to treat his conditions. Upon his return, claimant still was not receiving work assignments befitting an electrician. On or about July 1, 2022, claimant began volunteering for overtime work. Claimant hoped he would get electrician quality work by doing so because the overtime work assignments were determined by an overtime list rather than by the lead electrician.

(8) In late July 2022, claimant worked an evening overtime shift at one of the employer's jails. Claimant arrived at the jail with coworkers. Upon his arrival, the police officer at the front desk "was very aggressive" toward claimant, required claimant to pass through the metal detector repeatedly, and took claimant's cell phone and tools. October 26, 2022 Transcript at 10. One of claimant's coworkers filed a

complaint with the employer because she thought the officer's treatment of claimant was improper and was motivated by racial animus.

(9) On August 2, 2022, the employer held a teleconference meeting to investigate the front desk officer's conduct. Claimant's manager led the meeting, which was also attended by a senior member of the employer's H.R. department. Shortly after the meeting began, the tone of the meeting shifted from an investigation of the officer's conduct to criticism of claimant's own behavior. The manager played video footage of the encounter, which showed claimant smiling at times, and the manager told claimant that the officer "wasn't doing anything wrong and everything was okay" because claimant was smiling. October 27, 2022 Transcript at 23. The manager also asked why claimant was not wearing the employer's uniform, implying that claimant was at fault for the encounter because it was not clear to the officer that claimant was an employee. H.R. did not intervene, refocus the meeting, or otherwise address the manager's treatment of claimant during the meeting. Claimant was smiling in the footage because he thought his treatment was ridiculous. Claimant also was dressed professionally the night of the encounter and was not required to wear his uniform at night. After the manager spoke, tensions rose and claimant's union representatives ended the meeting.

(10) Shortly after the August 2, 2022 meeting concluded, claimant gave the employer a resignation letter advising of his intent to resign effective August 12, 2022. On August 12, 2022, claimant resigned as planned. Claimant resigned because of the manager's actions during the August 2, 2022 meeting, and because he persistently received non-electrician quality work assignments.

(11) Prior to voluntarily leaving work, claimant did not directly ask the employer's H.R. department to address claimant's concerns regarding his work assignments. However, there was no specific procedure for employees to raise concerns with the H.R. department. Instead, the employer had a policy that if a concern was brought to a manager, the manager would refer it to the H.R. department and they would follow up. The employer's H.R. department was aware of claimant's March 2022 meeting with the manager, but did not involve themselves in the meeting, and did not follow-up to determine whether the quality of claimant's work assignments ever improved.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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 clinical depression and clinical anxiety, permanent or long-term "physical or mental impairment[s]" 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.

The order under review concluded that claimant voluntarily quit work without good cause because he failed to pursue the alternative of raising his concerns directly with the employer's H.R. department

before he quit. Order No. 22-UI-206243 at 5. The record does not support that raising claimant's concerns with the H.R. department was a reasonable alternative to quitting.

As an initial matter, it is appropriate to decide this case under the modified standard of a reasonable and prudent person with claimant's impairments per 29 CFR §1630.2(h). The record shows that claimant was diagnosed with clinical depression and clinical anxiety in early March 2022, which caused him to take FMLA leave on March 15, 2022. Thereafter, claimant's conditions stabilized such that he could return to work on June 15, 2022, but claimant continued taking medication to treat the conditions. Claimant then continued working for a period of time until he resigned on August 12, 2022, approximately six months after his diagnoses. Given that claimant's conditions had been ongoing for six months at the time of his resignation and required continuing treatment, the record evidence is sufficient to conclude that claimant was suffering from long-term or permanent mental impairments within the meaning of 29 CFR §1630.2(h).

Claimant established good cause for voluntarily leaving work. The record shows that claimant faced a grave situation. Beginning in January 2022, claimant's lead electrician consistently assigned claimant work that involved little to no actual electrician work. The lead electrician did so in an apparent act of retaliation against claimant for calling a meeting while the lead electrician was away, something claimant was allowed to do. When the lead electrician met with claimant regarding the matter, he implied that claimant should quit by stating that the job was not working out for claimant and offering to write claimant a letter of recommendation. However, claimant continued working despite not receiving work befitting an electrician. He raised his concerns about the quality of his work assignments with the lead electrician, his manager, and his union representatives. These efforts did not result in improvement of claimant's work assignments. Instead, during a meeting about the matter with his manager, the manager implied that claimant received non-electrician work assignments because of poor attendance, even though claimant did not have any attendance problems. The manager's response at the meeting and claimant's frustrations stemming from his perception that he was treated unequally based on the quality of his work assignments which adversely impacted claimant's clinical depression and clinical anxiety, which led to claimant taking a three-month medical leave of absence.

Claimant returned to work in mid-June 2022, and began volunteering for overtime in an effort to obtain electrician-quality work by bypassing the lead electrician. These efforts led to claimant working the July 2022 overtime shift at the employer's jail, where claimant was treated aggressively by an officer. When a third party, not claimant, complained about this treatment, the employer called claimant to a meeting that was ostensibly an investigation of the officer. However, the tone of the meeting shifted to a criticism of claimant's own conduct, and involved the manager making unfounded assumptions about whether the officer had done anything wrong based on video footage showing claimant smiling. The manager also implied that claimant was at fault for the officer's conduct because claimant was not wearing an employer uniform, despite the fact that claimant was dressed professionally and was not required to wear his uniform at night. The manager's actions during the meeting and the employer's persistent failure to assign claimant electrician quality work caused claimant to tender a resignation letter shortly after the meeting ended and then voluntarily quit on August 12, 2022. Given that claimant was deprived of quality work opportunities for holding a meeting that he was not prohibited from calling, had no attendance problems but was informed by his manager that his attendance was to blame for the poor quality assignments, and was criticized for his conduct in a meeting he did not ask for about a police encounter in which the officer was under investigation for mistreating him, the record is

sufficient to show that a reasonable and prudent person with claimant's impairments would have quit work when claimant did.

Furthermore, the record shows that claimant pursued reasonable alternatives, but to no avail. Claimant brought up the quality of his assignments with the lead electrician. Claimant also raised his concerns about the quality of his assignments with his union representatives and claimant's union representatives talked to the lead electrician about the matter. The lead electrician continued assigning claimant work that involved little to no actual electrician work. Claimant and one of his union representatives each raised concerns about claimant not receiving electrician quality assignments with claimant's manager. While the manager did contact the lead electrician and asked the lead electrician to make sure he was assigning appropriate work to claimant, claimant was not aware of this communication, and in any event, the quality of claimant's work assignments did not improve. Claimant also eventually began volunteering for overtime work in an effort to get electrician quality work by bypassing the lead electrician. This effort also proved fruitless for while claimant got some electrician quality work, volunteering for overtime led to the police encounter at the employer's jail, which drew claimant into the fact-finding meeting regarding the officer's conduct in which his manager subjected him to the criticisms that led to claimant's resignation.

Although claimant did not directly ask the employer's H.R. department to address his concerns prior to his resignation, doing so would most likely have been futile. Per the testimony of the employer's witness, who was a senior H.R. analyst, there was no procedure for an employee to report concerns to H.R. but "if it was brought to a manager, it would be referred to HR and HR would follow up with – with whatever the next steps are, if an investigation is warranted." October 27, 2022 Transcript at 15. The record shows that the employer's H.R. department was aware of claimant's meeting with the manager regarding the quality of claimant's work assignments, but the H.R. department did not participate in it and understood that the manager thereafter asked the lead electrician to make sure he was assigning appropriate work to claimant. October 27, 2022 Transcript at 10. The H.R. department thus was on notice of the matter but evidently opted not to follow up on whether the manager's request of the lead electrician was effective in improving claimant's work assignments. Given that the H.R. department took no such action despite being notified of the issue, the record fails to show that contacting the H.R. department directly about claimant's concerns would have been fruitful. Therefore, contacting the H.R. department was not a reasonable alternative to quitting.

Likewise, the record does not show that raising concerns about the manager's actions in the August 2, 2022 meeting directly with the H.R. department would have made a difference. The employer's witness, a senior H.R. analyst, was present for the meeting and witnessed the manager's actions firsthand but took no action to redress it. Furthermore, the record fails to show how the H.R. department could have improved the situation where, as here, claimant suffered from depression and anxiety attributed in part to a belief that he was treated differently based on race, had experienced apparent retaliation for calling a meeting while the lead electrician was away, and was called into a meeting to investigate alleged race-based officer misconduct, but then saw that meeting transformed into a criticism of his own behavior.

Accordingly, the record shows that no reasonable and prudent person with claimant's mental health conditions would have continued to work for their employer for an additional period of time. Claimant therefore voluntarily quit with good cause, and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 22-UI-206243 is set aside, as outlined above.

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

**DATE of Service:** January 24, 2023

**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](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>. 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 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 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)

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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.