

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0047**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 15, 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 March 13, 2022 (decision # 71013). Claimant filed a timely request for hearing. On December 28, 2022, ALJ Passmore conducted a hearing at which the employer failed to appear, and on December 29, 2022 issued Order No. 22-UI-211206, affirming decision # 71013. On January 4, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Oregon State University employed claimant as a post-doctoral scholar from September 2018 until March 18, 2022.

(2) In June and July 2021, claimant was hospitalized for schizophrenia. The employer retroactively granted claimant medical leave during this time and for a period of recuperation thereafter, and allowed her to work remotely when she returned from leave. Claimant experienced less severe symptoms of schizophrenia after the hospitalization.

(3) In February 2022, the employer issued claimant a written warning regarding her job performance and low productivity. The employer did not threaten to discharge claimant and her job was not in jeopardy at that time. Claimant was unaware that her work was not meeting the employer's expectations prior to the warning. She did not discuss her diagnosis with the employer or request any modifications to perform or improve her work.

(4) On approximately March 4, 2022, claimant gave written notice to the employer of her resignation, effective March 18, 2022. Claimant resigned because, upon receiving the warning, she "thought [she] needed to leave and try to find a better fit and figure out what to do." Transcript at 27. Claimant did not work for the employer after March 18, 2022.

**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 had schizophrenia, 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.

Per OAR 471-030-0038(5)(b)(A), leaving work without good cause includes leaving suitable work to seek other work. Factors to consider when determining whether work is “suitable” include, in pertinent part, “the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.” ORS 657.190.

The record shows that claimant voluntarily quit because the employer gave her a warning about her job performance, and claimant therefore wanted to find a job that was “a better fit.” Claimant interpreted the warning as the employer telling her that she was a “bad employee.” Transcript at 9. When asked to describe the details of why the employer issued the warning, claimant testified to the employer’s unspecified dissatisfaction with a project she had worked on, and “a lack of progress and progression on the things that [she] was assigned to do.” Transcript at 17-18. Claimant stated she felt that her schizophrenia symptoms, though less severe after the hospitalization, influenced her ability to get work done. Transcript at 25-26. However, claimant’s testimony indicated she did not understand the warning to mean that the employer was contemplating discharging her. Transcript at 19.

As claimant was unaware of the employer’s dissatisfaction with her performance prior to the warning, claimant could have responded to it by using the warning to learn how to adjust her performance to meet the employer’s expectations. A reasonable and prudent person with the characteristics and qualities of an individual with claimant’s impairment would not have left the employment simply because of receiving this warning. Instead, such a person would have determined whether it was possible to perform their work satisfactorily. If the performance issues were related to claimant’s impairment, such a person would have explored whether any resources or modifications were available to assist them in improving their performance despite their impairment. Since claimant was not in imminent danger of being discharged because of her work performance, she did not face a situation of such gravity that she had to quit when she did, to “try to find a better fit” in other employment. Transcript at 27.

In addition, claimant did not contend that she quit to look for other work because her job changed in a way that made it unsuitable. The record shows that claimant largely performed the same tasks over the course of her employment, which lasted in excess of three years. Transcript at 17-18. Claimant stated that she intended to find similar work in the same field, but was open to other fields that were more

“friendly” to her condition. Transcript at 24. Claimant did not show that the employer behaved in a way that was not “friendly” to her or her condition, and the employer accommodated claimant’s condition when previously asked to do so by granting her medical leave. To the extent claimant quit to seek other work, she did so without good cause because she did not establish that her work for the employer was unsuitable.

Further, claimant had reasonable alternatives to quitting work. The record shows that claimant expected the employer to initiate discussions with her about her impairment and suggest modifications to her work or assist her with a disability claim. Transcript at 20. However, when the employer did not do so, it would have been reasonable for claimant to initiate those discussions before deciding to quit work. At a minimum, claimant could have asked the employer what specifically was deficient in her performance and if there were steps she could take to improve it. Claimant did not make such inquiries of the employer prior to quitting, and did not offer an explanation for why she failed to do so, other than that she “wasn’t sure where to go from there” after receiving the warning. Transcript at 26-27. Additionally, claimant stated she had benefitted from having time off “to recuperate” from her condition previously. Transcript at 22. Claimant testified she did not seek additional medical leave upon learning her impairment might have been affecting her job performance because she did not know whether she would qualify for more leave. Transcript at 22. As the employer previously encouraged claimant to apply for such leave and even granted it retroactively, this likely would not have been futile and was a reasonable alternative to quitting. Accordingly, claimant did not avail herself of reasonable alternatives to quitting work.

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

**DECISION:** Order No. 22-UI-211206 is affirmed.

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

**DATE of Service:** March 3, 2023

**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 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  
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