

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0359**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 13, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective November 27, 2022 (decision # 75959). Claimant filed a timely request for hearing. On March 15, 2023, ALJ Scott conducted a hearing and on March 21, 2023 issued Order No. 23-UI-219710, reversing decision # 75959 by concluding that claimant voluntarily quit work with good cause and was therefore not disqualified from receiving benefits based on the work separation. On March 23, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the employer's argument in reaching this decision.

**FINDINGS OF FACT:** (1) Lafayette Auto Body & RV Repair employed claimant as an estimator from July 18, 2022 until December 1, 2022.

(2) Prior to working for the employer, claimant had no experience or training as an estimator. As a result, the employer's owner was at times dissatisfied with claimant's work. On these occasions, the owner would yell at claimant, often in front of customers or other employees. If claimant tried to explain her actions or ask for clarification of her duties, the owner would repeatedly yell "excuses!" rather than listen to her. Audio Record at 7:29 to 7:43. Claimant often cried at work when the owner would yell at her.

(3) On one occasion, prior to December 1, 2022, the owner told claimant that she "smelled like a wet dog" in front of her coworkers. Audio Record at 8:53 to 9:04.

(4) During her employment, claimant experienced stress, depression, and elevated blood pressure, which she attributed to the owner's behavior towards her. She sought medical treatment for these conditions and her medical provider advised her to seek alternate employment.

(5) Prior to December 1, 2022, claimant spoke with the owner about how he treated her. The owner did not change how he treated claimant following the conversation.

(6) On December 1, 2022, the owner started yelling at claimant that she “deserve[d] a cut in pay” because he was dissatisfied with her work and yelled “excuses!” repeatedly as she tried to discuss his complaints. Audio Record at 7:18 to 7:39. Claimant left “in tears,” stating that she was quitting, and did not return to work for the employer again. Audio Record at 7:50 to 8:03.

**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).

Claimant voluntarily quit work because she experienced physical and mental problems due to the way the owner treated her. Claimant testified that the owner repeatedly yelled at her, dismissed her attempts to discuss his displeasure with her work, and made inappropriate remarks to her in front of coworkers. Audio Record at 7:18 to 8:03. The employer’s witness, the office manager, generally disputed claimant’s characterization of the owner’s treatment of her, stating that the owner generally got along with the employees, and the workplace was “like a family environment.” Audio Record at 23:26 to 23:36. However, though denying she witnessed the owner “scream” “excuses!” at claimant, the witness testified that it was the owner’s habit to tell employees not to “make excuses” if that employee offered an explanation for their conduct while being corrected by the owner. Audio Record at 23:52 to 24:45. The employer agreed in their written argument that the owner spoke to claimant “regarding mistakes and about making excuses,” and declared that, “[p]eople who make excuses do not learn from their mistakes.” Employer’s Written Argument at 1. Given the owner’s intolerance, as demonstrated in the record, for his employees’ mistakes and their attempts to explain or discuss them with the owner, claimant’s account that the owner repeatedly and harshly criticized her for mistakes and yelled “excuses!” at her rather than calmly discussing matters with her is, more likely than not, accurate.

The employer’s witness was present in the office when the final incident occurred on December 1, 2022. She testified that she did not hear “yelling,” however, she said she was “working and not paying attention” and did not “hear exactly what the conversation was” between claimant and the owner, and that part of the interaction took place outside the office. Audio Record at 19:12 to 19:47. Given the witnesses’ respective vantage points of the incident they witnessed, claimant had greater opportunity as a participant in the interaction to perceive the circumstances of the incident, and therefore her account is entitled to greater weight than the employer’s witness, who was admittedly distracted by work and farther away. Therefore, more likely than not, claimant’s account of the final incident, that the owner began yelling at claimant that she “deserve[d] a cut in pay” because he was dissatisfied with her work and yelled “excuses!” repeatedly as she tried to discuss his complaints, is accurate.

The employer's witness corroborated claimant's testimony that claimant was often brought to tears at work by stating that she observed claimant crying "quite a few times," but did not know the reason she was crying and assumed it was related to problems at home rather than the work environment. Audio Record at 24:45 to 25:40. Claimant testified regarding the effects of the owner's conduct toward her, including stress, depression, and high blood pressure, and about the medical treatment she received as a result, including the advice to seek other employment. Audio Record at 13:10 to 14:34. While the employer's witness suggested that other stressors in claimant's life may have contributed to or caused these conditions, only claimant experienced these symptoms and was privy to the opinions of her medical providers. Therefore, claimant's account of these conditions, their causes, and their treatment, is, more likely than not, accurate. Claimant has therefore shown by a preponderance of evidence that the owner treated her in a way that caused harm to her physical and mental health, and she therefore faced a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Further, claimant did not have reasonable alternatives to quitting work. Claimant testified that she attempted to explain to the owner, at a time when he was calm, the effect of his treatment on her wellbeing, but the owner's conduct did not change thereafter. Audio Record at 12:00 to 12:48. This suggests that any further attempts to address the matter with the owner would have been futile. As the employer's owner was responsible for the grave condition that claimant faced, claimant had no one else in authority to whom she could address her concerns about his conduct. Accordingly, claimant had no reasonable alternative to leaving work, and left work with good cause.

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

**DECISION:** Order No. 23-UI-219710 is affirmed.

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

**DATE of Service:** May 4, 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**  
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