

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0629**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 14, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective February 5, 2023 (decision # 93402). Claimant filed a timely request for hearing. On May 4, 2023, ALJ Nyberg conducted a hearing, and on May 12, 2023 issued Order No. 23-UI-224756, affirming decision # 93402.<sup>1</sup> On June 1, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted written arguments on June 1, 2023 and June 15, 2023. Claimant did not declare that she provided a copy of her June 1, 2023 argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Both arguments also contained information that was not part of the hearing record, and claimant did not show that factors or circumstances beyond claimant's reasonable control prevented her 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 claimant's June 15, 2023 argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Legacy Clinics, LLC employed claimant as a revenue and referral intake specialist from June 19, 2022 through February 9, 2023. Claimant transferred into the role from another position within the employer's organization.

(2) In approximately 2012, claimant was diagnosed with anxiety disorder and post-traumatic stress disorder (PTSD). Claimant continued to suffer from these conditions, which caused her to experience anxiety and panic attacks, through her tenure with the employer. Claimant took medication to help

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<sup>1</sup> The order under review concluded that claimant was disqualified from receiving benefits effective February 6, 2023. Order No. 23-UI-224756 at 3. However, February 6, 2023 was a Monday, and disqualifications under ORS 657.176 are effective on the first day—i.e., Sunday—of the week in which the work separation occurred. The date of disqualification stated in the order under review is therefore presumed to be a typographical error.

manage her symptoms. During her course of employment, claimant took two leaves of absence due to anxiety related to her work. Claimant did not otherwise seek accommodations for these conditions, although the employer had an accommodation process in place.

(3) During the course of her employment, claimant met with her manager on a weekly basis, in part because claimant was new to the position. During those meetings, claimant's manager brought up ways in which claimant could improve her work performance. Claimant felt like her manager spoke to her in an insulting and disparaging manner during these meetings, which contributed to claimant's work-related anxiety. For instance, at one point, claimant's manager stated to claimant, "I thought you had all this education and experience," which claimant took as an insinuation that claimant was not competent at the job. Audio Record at 14:11. Claimant also felt like she "never really fit in at the clinic" and was an "outcast" amongst coworkers. Audio Record at 14:20.

(4) Because of her interactions with her manager, who told claimant that she felt claimant was not a good fit for the role, claimant sought a transfer to another position or office within the employer's organization, but was unable to find one.

(5) On February 9, 2023, claimant attended a meeting with her manager, regarding claimant's work performance. Near the start of the meeting, claimant's manager stated to claimant that the meeting would end "one of two ways, and one way is not going to be good for you." Audio Record at 11:12. Claimant understood this statement to mean that her manager wanted her to resign, or that she would be discharged. As a result of this understanding, as well as her ongoing anxiety related to her interactions with her manager and coworkers, claimant voluntarily quit work during that meeting. Afterwards, claimant reiterated to her manager via text message that she had quit, and offered to work through a two-week notice period. Claimant's manager responded that the employer did not require two weeks' notice, and accepted claimant's resignation as effective that day.

(6) Despite claimant's perception of her manager's statements during the meeting on February 9, 2023, the employer did not intend to discharge claimant during that meeting.

(7) The employer had an internal grievance process in place. Prior to quitting, claimant did not file a grievance relating to her interactions with her manager or coworkers.

**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 had anxiety disorder and PTSD, permanent or long-term "physical or mental impairments" 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.

Claimant voluntarily quit work due to her perception that the employer was about to discharge her, as well as her continued anxiety relating to her interactions with her manager and coworkers. While triggered by her interactions with others, this anxiety stemmed from established diagnoses of PTSD and anxiety disorder. This, as well as the fact that she needed to take two leaves of absence relating to her conditions in less than a year, strongly suggest that claimant was not capable of performing the role without a debilitating exacerbation of her symptoms. That exacerbation reached a peak when claimant met with her manager on her last day of work. Although claimant was not actually about to be discharged, her manager's statement that the meeting would end "one of two ways," one of which would not be "good for" claimant, coupled with the on-going check in meetings with claimant to discuss claimant's needs for improvement in her work, caused claimant to reasonably believe that she was about to be discharged. A reasonable person with a history of mental health conditions such as claimant's, who reasonably but mistakenly believed that they were about to be discharged, would more likely than not find the anxiety that resulted from that belief and the on-going meetings to discuss claimant's needs for improvement to be intolerable.

The order under review concluded that claimant likely faced a grave situation, but further concluded that claimant's offer to work an additional two weeks was "strong evidence that the situation was not so intolerable, even for a person with anxiety such as the claimant, as to reach the level of gravity." Order No. 23-UI-224756 at 3. The record does not support this conclusion. The record suggests that claimant's work-related anxiety was primarily the result of the conflicts that she encountered with her manager and coworkers, culminating in the meeting at which she resigned. It therefore stands to reason that, had claimant been permitted to work for an additional two weeks, the knowledge that she would soon be free of those conflicts and anxiety related to meeting with the manager about her work performance would have lessened her anxiety to the point that the situation would be temporarily tolerable. As discussed above, claimant's anxiety and PTSD symptoms at the time she actually resigned was, more likely than not, intolerable. Therefore, claimant faced a grave situation, and the fact that she was willing to work for an additional two weeks does not affect that conclusion.

Further, claimant had no reasonable alternatives but to quit. The record shows that claimant attempted, without success, to find a different position within the employer's organization. The record also shows that claimant took medication to manage her conditions, but claimant's heightened anxiety relating to conflicts with her manager and coworkers and on-going meetings suggests that the medication was insufficient to remedy the problem. Finally, the employer had in place both an accommodations process and a grievance process, neither of which claimant pursued prior to quitting. The record is clear that, given her long term impairments and the modified good cause standard that applies as a result, claimant was aggrieved by the way that she was treated. However, the record fails to show that she was mistreated in a way that would have, more likely than not, induced the employer to take action if she had reported her concerns. Similarly, the record does not show what disability-related accommodations, if any, the employer could have offered that would have mitigated claimant's anxiety regarding her interactions with her manager and coworkers. Therefore, any such efforts on claimant's part would, more likely than not, have been futile.

Because claimant voluntarily quit work for a reason of such gravity that she had no reasonable alternative but to quit, claimant voluntarily quit work with good cause and is not disqualified from receiving benefits based on the work separation.

**DECISION:** Order No. 23-UI-224756 is set aside, as outlined above.

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

**DATE of Service:** July 12, 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.

**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.

**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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