

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0681**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 21, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective January 15, 2023 (decision # 110042). Claimant filed a timely request for hearing. On May 25, 2023, ALJ Taylor conducted a hearing, and on June 2, 2023 issued Order No. 23-UI-226810, affirming decision # 110042. On June 16, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's 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 her 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 argument to the extent it was based on the record.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) Jackson County employed claimant as a correctional deputy sheriff from November 16, 2015 until January 16, 2023.

(2) Beginning in March 2020, a staffing shortage required employees, including claimant, to work mandatory overtime frequently. Claimant volunteered for some overtime shifts so that she could choose which overtime hours she worked as opposed to having hours unexpectedly assigned to her. As a result, claimant was "exhausted," unable "to focus as well on [her] work," and concerned for her safety by working under those conditions. Transcript at 13. Claimant complained to the union and to her supervisor, but was told that nothing could be done about the understaffing.

(3) On November 22, 2020, claimant emailed her union representative requesting a meeting about “a pattern of behavior” from a sergeant at the jail and “another incident” involving him that occurred on November 18, 2020. Exhibit 1 at 5.

(4) On July 9, 2021, claimant had a conversation with a lieutenant at the jail during which the lieutenant yelled at claimant, called her a “self-centered little bitch,” and said that the other employees at the jail hated her, because claimant had recently taken time off from work during the staffing shortage. Exhibit 1 at 2. Claimant explained why she had to take the time off and asked for advice on how to remedy the situation with the lieutenant and the other employees. Claimant asked if the lieutenant would hate her for the rest of their careers and he replied, “right now, yes.” Exhibit 1 at 2. Claimant sometimes worked with the lieutenant thereafter, but “there was never any . . . words said after that.” Transcript at 10.

(5) Later on July 9, 2021, claimant emailed her union representative with details of the interaction with the lieutenant. The representative met with claimant and explained her options for filing a complaint, and the potential negative impact such a complaint could have on claimant eventually getting a promotion. Claimant decided against filing a complaint for that reason.

(6) On February 16, 2022, a mental health worker at the jail addressed claimant by saying, “Hey, sexy!” Exhibit 1 at 1. The following day, the worker apologized to claimant, which claimant “appreciate[d].” Exhibit 1 at 1. Claimant wrote a memo to her supervisor detailing the events, which was shared with the mental health worker’s supervisor. The worker was required to take an eight-hour training as a result. The worker did not engage in any other inappropriate conduct toward claimant thereafter.

(7) In November 2022, an email was sent to all employees announcing the promotion of the lieutenant involved in the July 9, 2021 incident. He would not have been claimant’s direct supervisor as a result of this promotion, but their work hours may have overlapped at times when working overtime. Claimant did not learn of the impending promotion until January 2023.

(8) Claimant felt unsafe at work because of the understaffing and because, due to her coworkers’ perceived dislike of her, and she felt those coworkers, particularly the lieutenant, were not “going to be able to have [her] back in any dangerous situation,” so she “felt really unsafe working with those people.” Transcript at 8-9.

(9) In late 2022, claimant applied for a position with the county’s Parole and Probation department but was not hired. She also attempted to transfer to a patrol assignment within the sheriff’s office “many times,” but was denied. Transcript at 43.

(10) On January 2, 2023, after hearing of the lieutenant’s impending promotion, claimant gave notice of her resignation, effective January 16, 2023, because claimant “was not willing to [ ] have to work under him.” Transcript at 6. She also left due to feelings of being unsafe and harassed. Claimant did not work for the employer after January 16, 2023.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-226810 is set aside and the matter remanded for further proceedings.

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. 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 did not face a grave situation when she quit in January 2023 based on her November 22, 2020 complaint and separate interactions with different coworkers that occurred in July 2021 and February 2022, as claimant continued working uneventfully with regard to those coworkers thereafter, and because understaffing had resulted in no incidents or injuries to employees. Order No. 23-UI-226810 at 3. However, the record suggests that claimant may have suffered from physical or mental health conditions, evidence of which was not fully developed in the record. Additional inquiry is needed to determine the proper standard with which to evaluate claimant’s reasons for quitting and whether she faced a grave situation for those reasons.

Claimant voluntarily quit working for the employer due to her dissatisfaction with several aspects of the work environment, including the employer’s response to instances of harassment and long and unsafe working hours due to understaffing and conflict with coworkers. The record suggests that claimant believed the cumulative effect of these working conditions caused her to be exhausted from lack of sleep, lose focus, and be fearful of her safety. Transcript at 13. Additional development of the record is therefore necessary to determine if claimant suffered from a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h), or otherwise faced a grave situation as a result of physical or mental conditions. If claimant had a qualifying impairment, her reasons for quitting should be reassessed using the standard of a reasonable and prudent person *with the characteristics and qualities of an individual with such an impairment*. Even if they did not rise to the level of a permanent or long-term physical or mental impairment, the record at hearing suggests that claimant was potentially suffering from mental or physical conditions that may have impacted her decision to quit work. On remand, inquiry should be made into claimant’s medical symptoms and treatment, if any, during her employment in order to assess how claimant’s long work hours or other working conditions impacted her physical and mental health to determine if they constituted a grave situation.

Claimant testified that she quit working for the employer when she did because she did not want to be supervised by a lieutenant who was being promoted, and whom she felt had harassed her on July 9, 2021. The record does not show that the lieutenant would have been claimant’s direct supervisor because of this promotion, but that the two may have had to continue working together at times. Claimant testified that the two had worked together at times after the July 2021 incident and that the lieutenant had not said or done anything to her in the 18 months following the incident. Transcript at 10. Similarly, after a single inappropriate comment to claimant on February 16, 2022 by a different coworker, the coworker offered an apology to claimant, which was apparently accepted, he was

disciplined by the employer, and no further inappropriate interactions occurred between him and claimant. The record does not contain specific information about interactions with a third coworker, a sergeant, about whom claimant consulted her union representative regarding making a complaint in November 2020, nor does it contain details of the conduct that led claimant to seek help from the union or the results of that request. Further development of the record is therefore necessary into whether the lieutenant's actions during or following the July 2021 incident, even if he did not speak to claimant thereafter, affected claimant's physical or mental health. This should include questions regarding what the lieutenant said to claimant and what his demeanor was like when the two worked together following the July 2021 incident. Similarly, inquiry should be made into the interactions with the sergeant in November 2020, whether claimant's complaints about the sergeant were resolved, and whether they impacted claimant's health.

Additional development of the record is also needed regarding claimant's assertions that her coworkers' dislike of her and the department's understaffing since March 2020 endangered her safety in an environment that required close coordination and trust between coworkers. The employer's witness, a captain at the jail, testified that there have been no "major situations" involving safety since the understaffing problems began. Transcript at 31. Claimant did not rebut this testimony or offer any examples of when she or other employees were injured or placed in a specific dangerous situation as a result of understaffing or lack of cooperation from her coworkers in the nearly three years she worked in understaffed conditions. However, additional assessment of these conditions and their impact on claimant's physical or mental health is needed to determine whether claimant faced a grave situation as a result of them, particularly if she is found to have a permanent or long-term impairment.

Further, if the evidence on remand shows that claimant faced a grave situation, inquiry should be made into whether reasonable alternatives to quitting were available, given the fruitlessness of claimant's several contacts with her union representative and denied attempts to transfer to a patrol assignment or other department within the county.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for to determine if claimant quit work without good cause, Order No. 23-UI-226810 is reversed, and this matter is remanded.

**DECISION:** Order No. 23-UI-226810 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 28, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-226810 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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