

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1031**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 9, 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 June 4, 2023 (decision # 70230). Claimant filed a timely request for hearing. On September 6, 2023, ALJ Logan conducted a hearing at which the employer failed to appear, and on September 13, 2023, issued Amended Order No. 23-UI-235704, affirming decision # 70230.<sup>1</sup> On September 11, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sephora employed claimant as a store director from April 20, 2015, until June 6, 2023. Claimant initially worked as the store director for a store in San Francisco, California, and transferred laterally to a store in the Portland, Oregon area in or around 2018.

(2) As a store director, claimant reported directly to the employer's district manager, who oversaw all of the employer's stores in Oregon and some in Idaho.

(3) For the first few years or so of his employment in Oregon, claimant worked well with the district manager. However, in the last two years or so of working under the district manager, he found his working relationship with her growing increasingly difficult. This was largely the result of the district manager's habit of assigning more, and more taxing, work to claimant. For instance, the district manager felt that claimant was "so good at working with" problem employees that she routinely transferred them to claimant's store where it was his job to "work them up or out of the company." Transcript at 6. Claimant consequently felt that his store became a "dumping ground" for problem employees. Transcript at 6. Additionally, the district manager would "generally nominate" claimant for extra work "without [his] knowledge" that was "very time consuming." Transcript at 7. In one instance, the district

<sup>1</sup> Amended Order No. 23-UI-235704 amended Order No. 23-UI-235410, issued on September 8, 2023, to correct the date of disqualification in Order No. 23-UI-235410. Claimant's September 11, 2023, application for review is construed to apply to Amended Order No. 23-UI-235704.

manager's tendency required claimant to perform approximately 20 hours of work without the associated amount of payroll allocated to his store for the work. Transcript at 7–8.

(4) As a result of the increased workload and the difficulty he faced with problem employees being transferred to his store, claimant experienced heightened stress. This led him to suffer from sleep impairment, depression, and social withdrawal. When he was not at work, claimant was “kind of hiding in [his] room and [he] didn't really go out or socialize,” and his husband was “getting rather concerned” for claimant's well-being. Transcript at 13. Claimant sought help from his therapist for these issues, who opined that working under the district manager was “not a healthy situation.” Transcript at 14.

(5) Claimant attempted to address his concerns about his district manager with the manager directly, as well as with the employer's human resources (HR) department. The manager generally acknowledged claimant's concerns and at one point told him that she did not “wanna cause [claimant] any additional stress.” Transcript at 7. However, after acknowledging his concerns she would generally resume over-assigning work to claimant shortly thereafter. Claimant filed two formal complaints with HR about the issue: one about two years before he left employment, and one about a year before he left employment. Although HR assured claimant that “things would get better,” and promised to discuss the concerns with the district manager, neither of these complaints resulted in meaningful changes to the concerns that claimant raised. Transcript at 8.

(6) Claimant discussed with the employer the possibility of being reassigned to another supervisor. However, there were no other stores in the state that were not under his district manager's purview. Claimant, and his husband by extension, would therefore have needed to move out of state to either California or Washington in order for claimant to be reassigned to another supervisor. Claimant did not wish to move out of state.

(7) In October 2022, as a result of work-induced stress and related conditions, claimant began a medical leave of absence. During his leave of absence, claimant retained an attorney and considered pursuing litigation against the employer due to a “toxic” work environment. Transcript at 12.

(8) Claimant remained on leave until he separated from employment. As of June 2023, his medical provider would not release him back to work. In order to resolve the matter of claimant's employment status, claimant's attorney and the employer negotiated, and claimant's attorney presented claimant with the option of a “mutual” agreement to separate and avoid litigation. Transcript at 16. Claimant agreed, and separated from employment on June 6, 2023.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with good cause.

**Nature of the work separation.** If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

At hearing, claimant did not characterize his work separation as a voluntary leaving, instead explaining that “it was mutually agreed upon that... [the parties] would terminate [claimant's] employment to avoid

litigation.” Transcript at 4. Claimant further testified that he “didn’t wanna be the one who quit from this,” and “really wanted [the employer] to do something about” his concerns with the district manager. Transcript at 16–17. Despite this testimony, however, the record shows that claimant’s objections to his working conditions, and the results they had on his well-being, led him to take the leave of absence and ultimately decide not to return to work. There is no indication in the record that the employer would not have permitted claimant to return to work if he had chosen to do so. Therefore, while claimant might have felt that he had little *choice* but to quit, he was nevertheless the party who moved to end the employment relationship. Claimant’s separation from work is therefore correctly characterized as a voluntary quit which occurred on June 6, 2023.

**Voluntary leaving.** 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). “[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.

The record shows that claimant quit work due to the stress relating to his working relationship with his manager, and the health effects that resulted from that stress. The order under review concluded that while claimant “may have explored an array of reasonable alternatives, he has not established that he faced a situation of such gravity that a reasonable and prudent person, exercising ordinary common sense, would quit work.” Amended Order No. 23-UI-235704 at 3. The order under review supported this conclusion by reasoning, for instance, that claimant did not “testify to any disruptive effects of having the transferred employees under his supervision, or to any diminishment in the success of his store which resulted from transferred employees,” and that claimant’s frustration with his manager constituted “routine workplace disagreements that do not create a grave situation.” Amended Order No. 23-UI-235704 at 3. The order under review acknowledged that claimant’s manager’s actions “caused claimant to become depressed, reclusive, and to find the workplace ‘unbearable,’ [but that] these are indications that at the time he left work, claimant was not functioning as a reasonable and prudent person of normal sensitivity[.]” Amended Order No. 23-UI-235704 at 3. The record does not support this line of reasoning or the resulting conclusion that claimant did not face a grave situation.

As a preliminary matter, the order under review errs in stating that claimant’s becoming depressed, reclusive, and finding the workplace “unbearable” in response to workplace stress meant that he was not functioning as a reasonable and prudent person of normal sensitivity. The “reasonable and prudent person” standard applies to acts or omissions. In other words, it is a gauge of whether or not someone has engaged in reasonable *behavior*. Merely experiencing emotional reactions and their resulting mental health symptoms, such as becoming depressed or feeling asocial, in response to a stressful situation, is not *behavior* that can be judged as reasonable or unreasonable.

Likewise, while claimant’s emotional responses to the stressors he faced might suggest that he is more sensitive to such stressors than some other people, it is error to suggest that the rule narrowly defines “normal sensitivity” to mean, for instance, steely-eyed stoicism. In the absence of a clearer definition of

“normal sensitivity” under the rule, it is instead reasonable to understand that term to encompass a broad spectrum of sensitivity in response to various stressors or other circumstances, perhaps excepting outlying levels of sensitivity which are particularly unusual in the general population. The record does not show that claimant’s responses to his own circumstances demonstrated an unusually heightened sensitivity, nor does it show that claimant engaged in irrational or unreasonable behavior as a result of his emotional responses to workplace stress. Therefore, the conclusion that claimant demonstrated that he was not acting as a reasonable or prudent person of normal sensitivity at the time that he left work is not supported by the record.

Instead, the record shows that claimant faced a grave situation in which a reasonable and prudent person would have concluded that they had no reasonable alternative but to quit. In concluding that claimant’s circumstances were not grave, the order under review focused on whether a reasonable and prudent person would have experienced the same emotional reactions or mental health symptoms as claimant did when faced with workload and responsibilities that he could not manage and a management team who did not appear to take his concerns seriously. The proper analysis in determining whether claimant’s circumstances were grave, however, does not turn on whether a reasonable and prudent person would have *experienced* the same distress, and resulting symptoms, as claimant did. It instead turns on whether such a person, experiencing the same distress and resulting symptoms that claimant experienced, would have *acted* as claimant did. Here, the record shows that claimant’s work-related stress caused him to experience sleep disturbances and depression which, in turn, caused him to withdraw from his life outside of work. Especially in light of the fact that claimant’s therapist determined that claimant’s working conditions were not “healthy” and that claimant’s medical provider would not release him to return to work, claimant’s health issues arising from workplace stress constituted a grave situation.

The record further shows that claimant had no reasonable alternative but to quit work. Claimant engaged in several attempts to address his concerns with his manager and with HR, but the offending behavior from the manager never changed. Claimant pursued these attempts over the course of some two years, apparently including via negotiation by his own attorney. The record does not show that further attempts would have likely been successful, such that they would have been a reasonable alternative to quitting. Furthermore, the only apparent option that would have allowed claimant to remain employed without continuing to work for the same manager was to transfer to a different district entirely. This would have, in turn, required him and his husband to move out of state, which was not acceptable to claimant. Given the expense and disruption that such a move is more likely than not to cause, this was not a reasonable alternative.

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

**DECISION:** Amended Order No. 23-UI-235704 is set aside, as outlined above.

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

**DATE of Service: October 18, 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 الاستئناف 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.