

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0273

Late Application For Review Allowed
Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 24, 2025, 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 from February 29, 2024, through January 3, 2026 (decision # L0008959962). Claimant filed a timely request for hearing. On March 5, 2025, ALJ Bender conducted a hearing, and on March 12, 2025, issued Order No. 25-UI-285725, reversing decision # L0008959962 by concluding that claimant quit with good cause and was not disqualified from receiving benefits based on the quit. On April 1, 2025, Order No. 25-UI-285725 became final without the employer filing an application for review with the Employment Appeals Board (EAB). On May 8, 2025, the employer filed a late application for review with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the written statement enclosed with the employer's application for review, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

WRITTEN ARGUMENT: The employer's May 16, 2025, argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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. EAB considered any parts of the employer's argument that were based on the hearing record.

FINDINGS OF FACT: (1) The Oregon Department of Land Conservation and Development employed claimant as their chief information officer from May 15, 2023, through October 1, 2024.

(2) Claimant lived in Portland, Oregon, and the employer's office was located in Salem, Oregon. At the time of hire, claimant worked a hybrid schedule of two days in the office and three days working from home each week.

(3) In January 2024, claimant began experiencing panic attacks, and was diagnosed with an anxiety disorder. Although claimant started receiving treatment for his condition at that time, his symptoms, particularly the panic attacks, grew progressively worse. Primarily, claimant experienced "overwhelming" fear while away from home, particularly as it caused him to be away from his wife, who was his "support system." Audio Record at 9:15. These symptoms hindered claimant's ability to think rationally. Likewise, claimant was concerned about his ability to get home safely if he had a panic attack while away from home.

(4) In or around June or July 2024, claimant had two separate panic attacks, both of which led him to visit the emergency room for treatment.

(5) After the second emergency room visit, claimant felt that his anxiety symptoms had become "unbearable." Audio Record at 11:30. On August 5, 2024, claimant contacted his supervisor and the employer's human resources (HR) department and requested to be allowed to work from home full time. Claimant believed that this accommodation would allow him time to get his mental health symptoms under control, although he did not know how long it would take to do so. In support of his request, claimant provided the employer with a doctor's note indicating that claimant should be allowed to work from home as much as possible.

(6) The employer considered claimant's accommodation request, but ultimately denied the request because they had reviewed the job's requirements and determined that all managers were required to be in the office two days each week. The employer instead suggested that claimant carpool to work, which claimant rejected, as it did not address the issue of having panic attacks while at work or away from home. The employer also suggested to claimant that he could seek medical leave through the Family Medical Leave Act (FMLA), Oregon Family Leave Act (OFLA), and Paid Leave Oregon. Claimant did not pursue these options, however, because he was not in the "right frame of mind" at the time, as his mental health condition was affecting his judgment. Audio Record at 26:10.

(7) On October 1, 2024, claimant quit work because of his ongoing mental health symptoms.

(8) Order No. 25-UI-285725, mailed to claimant on March 12, 2025, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 25-UI-285725 at 3. Order No. 25-UI-285725 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before April 1, 2025, to be timely."

(9) On March 13, 2025, the Department issued an amended administrative decision, decision # L0009743027, which amended decision # L0008959962 by changing the date of disqualification.¹ After

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

receiving this decision, the employer believed that the matter had been resolved in their favor. Later, the employer received a “letter in the mail asking for payment,” realized that decision # L0009743027 had been issued erroneously, and filed their application for review “as soon as [they] could.” EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: The employer’s late application for review of Order No. 25-UI-285725 is allowed. Claimant quit with good cause.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ended. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 25-UI-285725 was due by April 1, 2025. Because the employer did not file their application for review until May 8, 2025, the application for review was late. However, the employer had good cause for filing the late application for review. The record shows that on March 13, 2025, a day after the order under review was issued, the Department issued, in apparent error, an administrative decision that purported to amend decision # L0008959962. This amended decision concluded, contrary to the order under review, that claimant was disqualified from benefits, leading the employer to believe that the matter had been resolved in their favor. As this was a reasonable, albeit mistaken, conclusion to draw, the employer was prevented from filing a timely application for review due to factors or circumstances beyond their reasonable control.

Those factors or circumstances ended when the employer later received a “letter in the mail asking for payment,” leading them to realize that claimant had actually been allowed benefits. As the employer filed their late application for review “as soon as [they] could,” it can be reasonably inferred that they did so within seven days after those factors or circumstances ceased. Therefore, the employer had good cause for failing to file a timely application for review, and filed their late application within a reasonable time. As such, the employer’s late application for review is allowed.

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) (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 an anxiety disorder, 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.

Claimant quit work because he had been suffering from worsening panic attacks, brought on by being away from home, such as when he was required to be in the office two days per week. Given how these panic attacks affected claimant's ability to think rationally, and his concerns about being away from home while he was not thinking rationally, claimant faced a grave situation. Further, claimant had no reasonable alternative but to quit.

The only alternatives available to claimant were either to carpool to the office or take medical leave. As to the former, it is not apparent how this would have been likely to address claimant's panic attacks, as they were caused by his being away from home and his wife. As to the latter, taking medical leave would not have been a reasonable alternative in claimant's particular circumstances.

The record shows that claimant was not certain how long it would take for him to recover from his symptoms to improve enough to work in the office two days per week, as required, without suffering debilitating panic attacks. As such, and particularly given that claimant had been suffering from this condition without relief for ten months at the time that he quit, it is not clear that 12 weeks of paid leave would have been sufficient time for claimant to recover.² Thus, it is possible that the time claimant needed to recover would have eventually resulted in a protracted unpaid leave of absence, which is not a reasonable alternative to quitting. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (despite being on an unpaid leave of absence for more than a month claimant remained unable to return to work; the court held that "a protracted, unpaid leave of absence is not a 'reasonable alternative' to leaving work and being unemployed; indeed it is not an alternative at all"); *Taylor v. Employment Division*, 66 Or App 313, 674 P2d 64 (1984) (claimant had good cause to leave work after being suspended without pay for over a month, and there was no end in sight to the suspension).

Moreover, even if the amount of time claimant needed off from work to recover from his condition was paid (via either Paid Leave Oregon or accrued time off), seeking leave would not have been reasonable under these circumstances because claimant was not in the "right frame of mind" to do so at the time he quit. Although a reasonable and prudent person who was capable of viewing the situation rationally might have concluded that seeking leave would have been sufficient to address their medical needs, the record shows that claimant was not capable of viewing the situation rationally at that time due to his long-term impairment. An otherwise reasonable and prudent person who was temporarily incapable of rational decision-making due to a mental health condition such as claimant's would most likely have concluded, as claimant did, that being denied their requested accommodation left them with no reasonable alternative but to quit. As such, claimant quit work with good cause and is not disqualified from receiving benefits based on the quit.

DECISION: The application for review filed May 8, 2025, is allowed. Order No. 25-UI-285725 is affirmed.

² Under ORS 657B.020, an individual may be eligible for a maximum of 12 weeks of Paid Leave Oregon benefits. While claimant may have had some accrued sick or other personal leave available in addition to Paid Leave Oregon benefits, the record does not show how much was available to claimant at the time he quit. *See* Audio Record at 22:15.

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

DATE of Service: June 12, 2025

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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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>. If you are unable to complete the survey online and wish to have 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

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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.