

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1044**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115531). Claimant filed a timely request for hearing. On October 10 and 23, 2018, ALJ Wyatt conducted a hearing, and on October 31, 2018 issued Order No. 18-UI-118975, concluding claimant voluntarily left work with good cause. On November 2, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Subzero Scientific, LLC employed claimant as a sales representative from November 8, 2016 to August 14, 2018. The employer's owner was LS.

(2) Prior to August 13, 2018, claimant and a coworker (AS), who also served as the employer's human resources representative, worked in the employer's facility at desks in an office that had windows, an air conditioning unit and adequate ventilation. LS worked separately in his office on the other side of the building. Exhibit 2.

(3) In July 2018, LS told claimant that he believed claimant and AS needed to be supervised more closely and so he was going to move into the office claimant and AS worked in and move claimant to the "outer office" next to it. Exhibit 2. Claimant complied and worked in the "outer office" for one day but because there were no windows, air conditioning or ventilation in the "outer office," she got sick and missed work for several days. Upon her return, LS allowed claimant to return to her original office where she continued to work until August 13, 2018.

(4) On August 13, 2018, LS directed both claimant and AS to move their desks into an office space which recently had been converted from a marijuana grow room and which had no windows or adequate ventilation. Transcript (October 10, 2018 hearing) at 8-15; Exhibit 2. To modify that room into an accessible office space, LS had knocked out parts of two walls by using a stone saw to cut through concrete, drywall, insulation and electrical wiring, leaving exposed insulation, a dip in the concrete floor and no emergency exit. The room in question had strong odors of mold and chemicals. It also smelled strongly of carpet cleaner and pet urine from a rug LS had moved from his office into that space. To exit the converted office or to greet customers entering from the opposite side of the facility, claimant had to walk through one of the holes cut into the wall. *Id.* After claimant and AS moved into that space that day, both claimant and AS told LS that their new office was not suitable for use as an office space citing the lack of climate control, ventilation, odors and extensive drywall dust. Later that day, LS mopped the floor and wiped down the walls in an attempt to clean the space and mitigate the drywall dust problem.

(5) When claimant reported for work on August 14, 2018, she believed that her new office remained unsuitable as a work space because the cleaning efforts by LS had done little to remedy the dust problem and her remaining concerns regarding odors, ventilation, limited and unsafe ingress and egress had not been addressed. Claimant discussed her concerns with AS, with which AS agreed, and as the human resources representative, AS requested a meeting with LS to discuss their concerns about the new office space. Transcript (October 23, 2018 hearing) at 5-6. AS approached LS and began, “[LS], we need to talk about this office space. It’s really not going to work out for us.” Transcript (October 23, 2018 hearing) at 8. LS immediately requested that he and AS talk privately in another room. Once there, after AS told him that neither she nor claimant believed they could work in the new space, he angrily told her they would not be moved. As AS returned from the meeting to where claimant was waiting, she told her, “It didn’t go so well...He didn’t listen to any of our concerns.” Transcript (October 23, 2018 hearing) at 13. Seconds later, LS appeared and screamed, “. . . either you’re working here or you get the fuck out.” Transcript (October 10, 2018 hearing) at 17; Transcript (October 23, 2018 hearing) at 11. Claimant and AS then gathered their belongings and left. Claimant received her final paycheck, which included accrued and previously unpaid back pay for one month, that afternoon.

(6) Claimant voluntarily left work because of the risks that working for the employer in the recently converted office to which she was moved posed for her health.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant voluntarily left work with good cause.

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; 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, the separation is a discharge. OAR 471-030-0038(2) (January 11, 2018). The parties disagreed on the nature of the work separation with claimant asserting that the employer discharged her. Transcript (October 23, 2018) at 45. However, there was no dispute that the employer was willing to allow claimant to continue to work on and after August 14, 2018 if claimant agreed to work in the new space when he stated, “either you’re working here or you get...out.” Because claimant could have continued to work for the employer for an additional period of time but chose not to do so, the work separation on August 14, 2018 was a voluntary leaving.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). 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 her employer for an additional period of time.

Claimant quit her job because she was concerned about her safety and health at work.<sup>1</sup> Claimant believed that her health would be at risk if she worked in the new office space converted from a marijuana grow room that was poorly ventilated, lacked climate control, smelled strongly of various chemicals and other odors, required ingress and egress through holes in walls with exposed insulation and had uneven floors. Although the employer generally disputed claimant’s description of the new space and minimized the risks to which claimant would have been exposed, claimant’s description of risks associated with the new space was corroborated by her coworker AS. Transcript (October 23, 2018 hearing) at 11-12, 18-19. Given that claimant was made ill by a move to unventilated office for a single day in July 2018, claimant established that the employer’s imposed move to the converted office created a risk to her health that constituted a serious and grave concern for her.

The record also shows that both claimant and AS expressed their safety concerns regarding the new office to LS before they quit and also requested that they be allowed to remain in their prior office, with LS, which would have both satisfied their concerns and allowed LS to supervise them more closely which appeared to be his primary concern. Transcript (October 10, 2018 hearing) at 14. Only after that reasonable alternative was rejected, did claimant quit. Given her legitimate health concerns, claimant established that that no reasonable and prudent sales representative, in her circumstances with legitimate concerns about her health, would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits based on her work separation.

**DECISION:** Order No. 18-UI-118975 is affirmed.

D. P. Hettle and S. Alba;  
J. S. Cromwell, not participating.

**DATE of Service:** December 6, 2018

**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,

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<sup>1</sup> Although the record shows that claimant had not been paid for a month when she quit, neither she nor her representative asserted that late wages were a reason for her decision to quit. Accordingly, that circumstance has not been addressed.

Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://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 desisyong ito.

## 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 باتباع 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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