

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1094**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132004)<sup>1</sup>. Claimant filed a timely request for hearing. On November 13, 2018, ALJ Wyatt conducted a hearing, and on November 16, 2018, issued Order No. 18-UI-119882, concluding claimant voluntarily left work with good cause. Claimant was the only witness at the hearing. On November 20, 2018, ALJ Wyatt issued Amended Order No. 18-UI-120017, concluding claimant voluntarily left work with good cause and correcting clerical errors in the prior order. On November 24, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Fidelity Auto Center employed claimant from September 19, 2017 until September 23, 2017 as a car salesperson.

(2) At hire, the employer's owner told claimant she would earn \$11 per hour plus commissions for car sales, and that there was no overtime.

(3) On September 19, 2017, after working for ten hours, claimant prepared to end her shift. However, the owner told claimant that he expected all employees to remain at work until the business closed. Another salesperson later whispered to claimant, "This is the way it is here," and explained that the employees would continue to work after the business closed to park cars, close gates, and complete paperwork. Audio Record at 24:13 to 24:43. Claimant worked fourteen hours that day, but was paid for only eight hours, at a rate of \$11 per hour.

(4) On September 20, 21 and 22, 2017, claimant worked fourteen hours per day, but was paid for only eight hours per day. The owner was present at the business those days.

<sup>1</sup> The first decision, decision # 91130, was amended to decision # 73106 on October 9, 2018, which was later corrected to decision # 132004 on October 9, 2018.

(5) The car salespeople put their customer appointments on a board, including the customer names and appointment times, and put their names next to their customer appointments. On September 23, 2017, claimant had scheduled meetings with two customers she had been working with, and to whom she expected to sell cars. Claimant's coworkers told her that she was to wait in the sales office for her customers to arrive, at which time someone would tell her that they had arrived. As claimant waited in the sales office and spoke with another customer on the telephone, another senior salesperson took over claimant's scheduled customer appointments and sold the cars claimant had expected to sell to the two customers. Claimant received no commissions for the sales.

(6) Claimant immediately went to the employer's administrative office where she spoke with human resources staff. Claimant complained to them about the salesperson who had taken claimant's customers. They recommended that claimant speak to the owner. Claimant thought it would be futile to speak to the owner.

(7) On September 23, 2017, claimant voluntarily left work rather than continue to work fourteen hours per day for eight hours' of wages.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she 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) (January 11, 2018). 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 his employer for an additional period of time.

To the extent claimant left work because she was not paid for all the hours she worked and another salesperson took over her pending sales, claimant left work for good cause. Oregon wage laws required the employer to pay claimant a minimum hourly wage of \$10.25 per hour. ORS 653.025(1)(d). Claimant faced a grave situation where the employer required claimant to work six hours per day in addition to her regular shift, for no pay. Specifically, the employer required claimant to work fourteen hours per day, but only paid her for eight hours, and the record shows it was unlikely that claimant would earn commissions to compensate for the additional hours she worked where other salespeople were apparently permitted to intervene with her customers and prevent her from completing sales. The wage violations would likely have been an ongoing problem. The owner told claimant there was "no overtime," yet another salesperson told claimant that working even after the business closed was "the way it [was] there," showing that more likely than not, working unpaid overtime was common practice. Claimant complained to the employer's human resources about the other salesperson taking claimant's sales. They did not assist claimant other than to recommend that claimant speak to the owner about what occurred. However, based on this record, there is no evidence that complaining to the owner about her unpaid wages or the other salesperson's actions would have been anything but futile where the owner himself set the expectation that salespeople should work past closing time for no wages. It is also

understandable that claimant would have no confidence that an owner who failed to pay her wages for all the hours she worked would assist where another senior salesperson took over her pending sales.

The Court of Appeals has recognized that it may be good cause for a claimant to leave work when on an ongoing basis an employer has engaged in pay practices that violate Oregon wage and hour laws. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 464, 954 P2d 1265 (1998) (claimant had good cause to leave work when dispute over wage practices was ongoing and likely to recur in the future); *Cavitt v. Employment Division*, 105 Or App 81, 803 P2d 778 (1990) (claimant had good cause to leave work when employer failed to pay him twice in accordance with Oregon law and there was no evidence that the employer would not continue failing to do so); *compare Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (not good cause for claimant to leave work when wage dispute not ongoing or likely to recur, and only remaining issue was amount of the back pay owed to claimant). Here, based on the employer's failure to pay claimant for all her wages due, and the likelihood that the practice would reoccur, we conclude that claimant voluntarily left work with good cause.

No reasonable and prudent person would continue to work for an employer who likely would fail to pay her in accordance with state law on an ongoing basis. Claimant had good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-120017 is affirmed.

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

**DATE of Service: December 21, 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, 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

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## 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

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**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.

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