

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1149**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84837). Claimant filed a timely request for hearing. On November 20, 2018, ALJ F. Scott conducted a hearing, and on November 27, 2018, issued Order No. 18-UI-120290, concluding that claimant had good cause to leave work. On December 14, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted a written argument. The employer's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond its reasonable control prevented the employer from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing, and the employer's argument to the extent it was based thereon, when reaching this decision.

**FINDINGS OF FACT:** (1) O'Reilly Auto Parts employed claimant as the store manager of its Florence, Oregon store from April 17, 2017 until August 31, 2018.

(2) As the store manager, claimant was responsible for his store's sales levels, profitability and overall operational efficiency. He was expected to show consistent sales growth, operate the store at a profit and maintain adequate and proficient staffing levels. As a salaried employee, he was expected to work whatever hours it took to accomplish his managerial responsibilities. If his store was understaffed, he was expected to personally cover the hours that could not be assigned to the staff he had.

(3) In spite of his efforts to hire and retain employees, claimant's store was consistently understaffed. Florence, Oregon was a coastal tourist community and its demographics included a large percentage of retired persons. This reduced the available workforce which caused pay rates for all industries to become inflated. Some fast food establishments offered employees \$15.00 per hour to attract workers. In contrast, claimant initially was authorized to offer his employees \$11.00 per hour, which caused and

perpetuated his staffing shortage. Claimant discussed the problem with his direct supervisor, the district manager, and eventually was authorized to offer new employees \$12.50 per hour. Although the higher starting wage helped to some degree, the staffing shortage continued. During the year 2018, the employee turnover rate at the Florence store was 200 per cent, whereas the employer store average was approximately 70 per cent.

(4) As a result of the staffing shortage, claimant was required to work many hours in excess of 40 most weeks, often working ten to fourteen hours per day and 70 to 90 hours per week. He frequently worked many days in a row without a day off. After discussing his excessive work hours with the district manager, for about two months, the district manager authorized claimant to pay hourly employees overtime to enable claimant to have some time off. However, after that brief period, he withdrew the overtime authorization due to financial constraints.

(5) The chronic understaffing and resulting excessive work hours for claimant caused him to experience substantial stress, fatigue and loss of sleep. In approximately March 2018, claimant had at least two episodes when he became faint while at work and nearly blacked out. He discussed the issue with his district manager, and the district manager recommended drinking more water. He then contacted the employer's human resources department about his work stress and was referred to its employee assistance program, which recommended that claimant see a therapist. Claimant saw a therapist for six sessions but discontinued the sessions when he learned they would not be covered by insurance and he could not afford to pay for them. However, before claimant discontinued the sessions, the therapist recommended that he seek other work to protect his health.

(6) Claimant also attempted to discuss the staffing shortage problem and possible solutions with the employer's regional manager, and when he eventually spoke to him and told him what he wanted to discuss, the regional manager responded "that's not between me and you. That's between you and [the district manager]" and refused to discuss it. Transcript at 16.

(7) On August 31, 2018, claimant was working in his store with only a delivery driver, again because he was short-staffed, and experienced another near-blackout. "The room started spinning" and "I was having trouble standing." Transcript at 7. He called his wife, told her what had occurred and she demanded that he go see a physician. Four hours later, after another employee relieved him, he met with a physician who determined that his blood pressure was extremely high and performed several other tests, including an EKG, a blood test and a drug screen which was negative. After several hours of tests, the physician asked claimant if he was experiencing stress at home or at work. After claimant described his working conditions and work stress, the physician concluded that his condition was "stress related 100 percent" and told him "you have two choices. I either medicate you to the point you're useless or you get rid of the source of the problem." Transcript at 6-8. He also told claimant that if he had examined him during his "episode," he would have admitted him to the hospital as a precaution against a stroke. Transcript at 4. That day, claimant notified the employer he was quitting immediately. By quitting without providing 30 days' notice, claimant forfeited entitlement to any bonuses and his accumulated paid vacation. Claimant quit work to protect his health.

(8) The employer never offered claimant a step-down position as a potential solution to his health problem. Claimant did not request a leave of absence because it would have been unpaid and he believed

not reporting for work when his store was already short staffed would have exacerbated the staffing problem that caused his stress.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 the employer for an additional period of time.

Claimant quit work to protect his health after having at least three near-blackout experiences at work, being diagnosed with high blood pressure attributed to work stress and being advised by both a therapist and physician to leave his job. The district manager did not dispute claimant’s testimony about the understaffing situation in the workplace and asserted that he was “fully aware” of the employee turnover rate at the Florence store. Transcript at 35. Nor did the employer’s witness dispute that claimant had consulted with him several times about ways to alleviate or solve the staffing problem and attempted to follow his suggestions, approached the regional manager about the problem without receiving a response, and discussed with him his near blackout experiences while at work. Finally, the district manager did not dispute that claimant quit when he did to protect his health. Because claimant’s testimony was plausible, appeared credible and was uncontested, claimant showed that his situation was grave.

The testimony of the district manager, while not challenging the gravity of claimant’s situation, suggested that claimant might not have pursued a reasonable alternative to quitting before he decided to leave work. Although he suggested, hypothetically, that claimant could have sought a step-down position with less responsibility or obligation and pay, he admitted that he never approached claimant about stepping down in position despite being aware of his difficulties, and never asserted that such an option was even available to claimant at the time he quit. Transcript at 38-39. Generally speaking, an unverified and speculative hypothesis about the existence of an alternative does not make it a reasonable alternative without evidence that the employer was actually able and willing to make that alternative available to claimant. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (a transfer to a different position was not a reasonable alternative where there was no evidence that such a position was available). Moreover, given the chronic staffing shortage at the Florence store, it is doubtful that such an alternative, even if available, would have been practical or any less stressful to claimant.

At hearing, claimant admitted that he became aware, very near the end of his employment, that a leave of absence was potentially available to him. However, claimant testified that leave of absence would have been unpaid, which he could not afford, and that by taking a leave for even a short period, the staffing shortage that created his need for a leave would have been exacerbated. Transcript at 20-21.

Time off, a leave of absence, or a workplace accommodation generally is not a reasonable alternative to leaving work when the underlying problem is the working conditions, which are not likely to abate. *See Warkentin v. Employment Department*, 245 Or App 128, 261 P3d 72 (2011) (leave to obtain medical or psychological treatment for the health problems that overwork caused was not a reasonable alternative to quitting because treatment would not remedy the stressful working conditions that caused claimant to become ill, would only postpone claimant's continued experience of stress, and, by quitting, claimant was able to avoid the stress altogether).

Viewing the record as a whole, claimant voluntarily left work due to a situation of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded he had no reasonable alternative but to leave work when he did. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits based on his work separation from the employer.

**DECISION:** Order No. 18-UI-120290 is affirmed.

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

**DATE of Service:** January 11, 2019

**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

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 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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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