

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1164**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 142659). The employer filed a timely request for hearing. On December 10, 2018, ALJ Murdock conducted a hearing, and on December 17, 2018 issued Order No. 18-UI-121736, concluding that claimant did not have good cause to quit. On December 19, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Having been allowed an extension of time until January 23, 2019 to file a written argument in this matter, claimant did so on January 23, 2019. However, claimant did not certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). For that reason, EAB did not consider claimant's argument. Had we done so, EAB's decision would be the same for the reasons discussed below.

**FINDINGS OF FACT:** (1) West Coast Sandblasting LLC employed claimant as a sandblaster from approximately July 2018 until October 2, 2018.

(2) Claimant performed sandblasting in a booth. The booth was dark and sandblasting was noisy and generated a great deal of dust. If the employer's owner or other employees needed to speak with a sandblaster while he was sandblasting in the booth, they opened the door to the booth and waited for the light that entered and the dust that exited the booth through the open door to alert the sandblaster that he should stop working because someone wanted his attention. The owner and employees did not want to startle the sandblaster by entering the booth without notice while he was in the process of sandblasting because the sandblaster might turn and hit them with the sandblasting hose. Although a sandblaster typically became aware that the door was opened and stopped work within 30 seconds to a minute, claimant sometimes continued sandblasting for up to five minutes after the door was opened. On a few

occasions, the owner advised claimant that he should stop sandblasting more quickly after the door was opened.

(3) Once, when claimant was sandblasting, the owner opened the door to the booth because he wanted to speak with claimant. When claimant did not stop sandblasting within five minutes, the owner tried to get claimant's attention by tossing, underhand, an empty Gatorade bottle into the booth. The owner was concerned that if he entered the dark and noisy booth without warning, it would startle claimant and claimant would hit him with the hose. The Gatorade bottle struck claimant in the back. Claimant was upset at the way the owner tried to capture his attention.

(4) On October 2, 2018, claimant was sandblasting in the booth. That day, the owner approached claimant in the sandblasting booth, intending to give claimant a written warning based on his performance. Claimant perceived that the owner was yelling at him and pointing a finger at his chest. That day, claimant left work for the stated reason that the work environment was hostile.

(5) A short time after leaving work, claimant filed a complaint against the employer with the Occupational Safety and Health Administration (OSHA). That complaint alleged that the employer's workplace was hostile and cited, among other things, the incident involving the Gatorade bottle that was tossed at claimant and an incident in which claimant alleged that the owner had struck him in the groin with a broomstick handle. OSHA inspectors arrived unannounced at the employer's workplace to investigate claimant's allegations, and inspected the employer's business records and interviewed the owner and employees. The OSHA inspectors did not find any violations on the employer's part. With respect to the incident involving the Gatorade bottle, the owner, in consultation with OSHA inspectors, decided to, and did, install a spotlight in the sandblasting booth that was to be activated if someone wanted to get the attention of the sandblaster. With respect to the incidents that claimant cited in his complaint, including the tossing of the Gatorade bottle and being struck in the groin with the broomstick, the OSHA inspectors determined only that they might have involved non-actionable "horseplay." Audio at ~25:38.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he 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 his employer for an additional period of time.

Claimant contended that he left work when he did because the owner's behavior on October 2, 2018 was the culminating incident in of a long-standing series of incidents in which the owner subjected him to hostile and abusive behavior. Audio at ~6:20. In support of his position, claimant testified about the prior incident involving the Gatorade bottle, an incident in which he alleged that the owner intentionally struck him in the groin with a broomstick handle, and an incident in which the owner, who was

operating a forklift, allegedly intentionally caused a man-lift that was set on the forks to lurch and shake when claimant was in it suspended at an elevation of twelve feet. Audio at ~6:47, ~7:30, ~8:02. While the owner testified that he had tossed the Gatorade bottle at claimant, he categorically denied claimant's other allegations. Audio at ~13:02, ~16:26, ~16:41. While it is not clear from the record if claimant reported the allegations about the man-lift incident to OSHA, it appears that he did report the alleged incidents involving the Gatorade bottle and the broomstick handle to the groin. Because claimant demonstrated at hearing only that OSHA concluded, after a presumably adequate investigation, that there were no violations as to the incidents that claimant reported and, at most, those incidents involved horseplay, claimant did not show, more likely than not, that those incidents created a situation of gravity for him. With respect to the man-lift incident, if claimant did not report it to OSHA that seriously undercuts any claim that it was grave, and if he did report it and OSHA determined that it involved only horseplay or did not for other reasons violate OSHA standards, that also suggests that it did not give rise to an objectively grave situation for claimant. On this record, claimant failed to demonstrate, more likely than not, that the incidents he contended occurred before October 2, allegedly showing the existence of a hostile, oppressive or abusive workplace, actually created grave circumstances for him.

In connection with claimant's interaction with the owner on October 2, his account of the owner's alleged behavior is accepted. It does not appear to us that it was out of the norm for the owner to have addressed claimant in an elevated voice when he was in the sandblasting booth given the noise involved in sandblasting. Claimant's description of the owner's behavior on October 2, including yelling and pointing a finger at him, is not sufficient, without more, to show that he was subject to an abusive or oppressive work environment, or that the manner in which the owner treated him on that occasion created a situation of gravity for him. On this record claimant failed to demonstrate that a reasonable and prudent person would have quit work based on his October 2 interaction with the owner.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-121376 is affirmed.

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

**DATE of Service:** January 24, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. 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 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**

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 محكمة 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)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.