

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1177**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110717). Claimant filed a timely request for hearing. On November 27, 2018, ALJ Frank conducted a hearing, and on December 6, 2018, issued Order No. 18-UI-120751, affirming the Department's decision. On December 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Willamette Graystone, Inc., a seller of concrete masonry products, employed claimant as its Medford, Oregon office branch manager from November 2013 to September 4, 2018.

(2) Part of claimant's job consisted of working with the employer's outside sales person for the Medford area. Claimant was charged with processing commercial orders obtained by the sales person, who worked one-on-one with customers to obtain orders and field customer complaints. Claimant's role was to facilitate the fulfillment of orders obtained by the sales person.

(3) From the time claimant began her job, the lone outside sales person (CJM), who previously had been a partial owner and area manager and who maintained a lucrative commercial account, had been critical of claimant working for the employer as the branch manager. He told claimant that "women did not deserve to be in construction" and "should not be in the workplace." Audio Record ~ 9:50 to 10:30. He often belittled and chastised claimant in front of coworkers and even approached office staff in private

about obtaining information that would portray claimant in a bad light or get her in trouble. Exhibit 2. Claimant complained to the employer's human resources managers about CJM and although circumstances temporarily improved after doing so, the improvements did not last. After a human resources manager was replaced with someone new, CJM's negative behavior toward claimant resumed for a period of time. When ownership of the company changed in 2017, CJM was "demoted" from being an area manager and salesperson to simply conducting sales. Audio Record ~ 55:45 to 56:15. At that time, CJM told claimant that she "had a target on [her] back and if [she] went to the [new] regional manager (RW) that there would be problems . . . [He would] make sure he said things with a level of deniability." Audio Record ~ 10:30 to 11:00.

(4) After RW became the regional manager, claimant occasionally complained to him about CJM. However, RW considered claimant's complaints to be about "communication" rather than "harassment" because she never used that term. Audio Record ~ 32:00 to 33:30. Consequently, RW facilitated meetings with claimant, CJM, CJM's supervisor, and himself and simply encouraged them to improve the communication between them. Claimant attempted to do so but felt she was the only one who attempted to improve communication. CJM's behavior toward her did not improve.

(5) The increasing stress claimant experienced over what she considered CJM's hostile, belittling, and intimidating behavior toward her caused her to cry at work and lose weight and sleep, and affected her relationships at home. Even when claimant was on vacation, she felt constant worry over whether CJM may have been making false statements to customers or others about her job performance.

(6) Around early August 2018, CJM completed a sale to a customer and gave claimant the information regarding what materials were needed to complete the job before claimant went on a vacation. Claimant ordered the materials in question before she left based on the information given to her which included that a certain mortar was not needed. Consequently, claimant did not plan in advance to have that material in stock. However, when she returned, she learned that the mortar in question was part of the order and was not immediately available, and that the customer was angry. When she spoke to CJM about the issue, he "smirked" and said to her, "I guess things changed. You'll just have to figure it out." Audio Record ~ 13:00 to 14:30. When claimant spoke to the customer, the customer told her that CJM knew before claimant left that the job required the mortar material.

(7) Claimant concluded that the antagonism and "continual harassment" by CJM would never end and that she needed to quit for her physical and emotional health. Audio Record ~ 7:15 to 7:45. On August 10, 2018, she notified the employer that she was quitting. However, when RW asked her to continue working until the end of the month, she agreed to remain until September 7, 2018.

(8) The employer began a search for claimant's replacement and claimant strongly recommended her assistant for the job. However, on September 4, 2018, CJM approached claimant and told her that he intended to tell the assistant in question that he would not get the job and then did so, even though he did not have that authority. CJM smiled at claimant and stated, "I really hope this doesn't make your last week hard." CJM's comment was so upsetting to claimant that she accelerated her quit date and left work that day.

(9) On September 5, 2018, claimant sent two text messages to RW. In those messages, claimant stated,

Good morning. I will not be going back to work and have turned in my key. I cannot work around [CJW] any longer. The staff even told me to go rather than spend another day crying at work. I will call you later and I hope you understand he is a big problem.

. . . I don't want anyone to think I'm trying to create any problems. I absolutely loved my job with the exception of everything [CJW] put me thru (sic). I would come back if he didn't work for the company. Exhibit 2.

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

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) (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.

In Order No. 18-UI-120751, the ALJ concluded that claimant voluntarily left work without good cause, reasoning that claimant failed to show that her circumstances at work that caused her to quit were sufficiently grave to justify her decision to do so, that she told others that she intended to quit to have children or attend school, and that she had reasonable alternatives to quitting such as transferring or requesting a demotion. Order No. 18-UI-120751 at 3. We disagree.

The ALJ's conclusions that claimant told others that she intended to quit to have children or attend school and that she had reasonable alternatives to quitting such as transferring or requesting a demotion were not supported by the record. Claimant testified that she quit only because of CJM and did not decide to attend school until after she quit. Audio Record ~ 7:15 to 7:45 and 8:30 to 10:00. Her text messages to RW on September 5 support those assertions and RW testified that at the time claimant quit he was not aware of any intention on claimant's part to attend school. Audio Record ~ Exhibit 2; Audio Record ~ 8:45 to 9:45, 41:00 to 41:25 and 51:10 to 51:50. RW testified that although a transfer to another branch within a reasonable distance was a theoretical possibility, that was not an available option at the time she quit. Audio Record ~ 8:45 to 9:45. He also testified that although a transfer to a sales position may have been feasible, it would have required continuing contact with CJM and the record shows that such an option was never offered to claimant although she had given the employer a month's notice of her intention to quit. Audio Record ~ 8:45 to 9:45.

The record as a whole shows that claimant quit work because after years of CJM's attempts to disparage her reputation with the employer and her customers and coworkers, and unsuccessful attempts by claimant to improve her communications with CJM, the incident in early August 2018 demonstrated to her that their working relationship was unworkable and would never improve. CJM's earlier statement to claimant that she "had a target on [her] back and if [she] went to the regional manager (RW) that there would be problems . . . [He would] make sure he said things with a level of deniability," appeared to

come to fruition with that incident. Moreover, based on claimant's conversation with the customer after she returned from vacation, showing that CJM knew the mortar was needed for the job when he gave claimant the order details omitting the mortar, claimant reasonably concluded that CJM was continuing to target her without any reasonable prospect of effective intervention by the employer. Claimant had repeatedly complained to both RW and the previous regional manager about CJM's behavior, which caused RW to facilitate a meeting between four people ostensibly to improve their "communication" problems; the fact that RW did not consider CJM's behavior sufficient harassing, and that CJM's behavior toward claimant did not improve or change despite claimant's efforts and RW's attempt(s) to facilitate such improvements suggests that claimant's only choices at the time she quit were to either continue working with CJM under the conditions that were causing her to cry at work, lose weight, lose sleep, and affect her relationships at home, or to quit her job.

When claimant gave her notice on August 10, 2018, the protracted and apparently unrelenting attempts by CJM to undermine claimant's relationship with the employer, her coworkers, and customers had negatively affected claimant's physical and emotional health by causing claimant to lose weight and sleep, and affecting her family relationships and her emotional stability at work. Claimant had made attempts to improve her working relationship with CJM, without success. There is insufficient evidence in the record to show that reasonable alternatives to quitting work were available to claimant. Viewed objectively, claimant demonstrated that her situation was of such gravity that any reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that she had no reasonable alternative but to leave work when she did.

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

**DECISION:** Order No. 18-UI-120751 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service: January 25, 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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<sup>1</sup> This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.



# 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 بمحكمة الإستئناف 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.

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