

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1182**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 84051). Claimant filed a timely request for hearing. On December 10, 2018, ALJ Shoemake conducted a hearing, and on December 14, 2018 issued Order No. 18-UI-121277, reversing the Department's decision. On December 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Dollar General employed claimant from February 25, 2016 until September 14, 2018, last as an assistant manager.

(2) During her employment, claimant was displeased about the store's physical disorganization and lack of cleanliness. On occasion, claimant spoke about her concerns with the store manager. Although the store manager spoke with other store employees about the issues claimant raised, the disorganization was not consistently remedied because high staff turnover prevented adequately training employees in proper store upkeep. Claimant thought the manager had not spoken to other employees about the issues that concerned her.

(3) As claimant's employment continued, claimant came to believe that the store manager was a "terrible manager" and "always made a [physical] mess [in the store]" that she had to "clean up." Audio at ~23:51. When the store manager did not remedy the lack of tidiness in the store and problems due to staff turnover and staff absences due to illness, claimant spoke about them with the district manager as well as about her dissatisfactions with the store manager. Claimant told the district manager that it was "frustrating" for her to work under the conditions that existed in the store. Audio at ~26:56. The district manager tried to address claimant's concerns by speaking with the store manager and store employees. Audio at ~18:36. Claimant did not think the conditions in the store improved.

(4) By August 2018, claimant was “stressed out” over the “total mess [of the store] all the time” and because sometimes she needed to work nine or ten hours per day and sometimes she had to spend three or four hours at the cash register. Audio at ~21:14, ~22:30. That month, claimant lost 12 pounds.

(5) On August 31, 2018, claimant gave the store manager a written resignation stating that her last day of work was going to be September 14, 2018. When she delivered her resignation, claimant told the store manager that she would not quit if conditions in the store changed. Claimant understood the store manager to tell her that he could not make that commitment. That day, the store manager spoke with existing employees and offered claimant’s assistant manager position to another employee who accepted the position. On September 1, 2018, claimant told the store manager that she wanted to withdraw her resignation and continue working. The store manager discussed claimant’s attempt to rescind her resignation with the district manager. Later, the store manager told claimant that her assistant manager position had been filled, but that the employer would allow her to continue working in the position of “part-time key,” which was a management position and had the same rate of pay as that of assistant manager. Claimant declined the part-time position.

(6) On September 14, 2018, claimant voluntarily left work.

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

The employer contended that claimant voluntarily left work while claimant testified that she believed the employer discharged her. Audio at ~8:42, ~20:50. As a result, the first issue this case presents is the nature of the work separation. OAR 471-030-0038(2) (January 11, 2018) provides the standard for characterizing the work separation. 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. OAR 471-030-0038(2)(a). 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 by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant based her belief that she was discharged on the manager not having allowed her to rescind her resignation on September 1, 2018, the day after she turned it in. However, it is well established that where a claimant has notified an employer that he or she plans to leave work and later attempts to withdraw the resignation, the employer’s refusal to allow the withdrawal of the resignation does not transform the separation into a discharge, or change it from a voluntary leaving. *Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999); *Schmelzer v. Employment Division*, 57 Or App 759, 646 P2d 650 (1982). Claimant’s work separation was a voluntary leaving on September 14, 2018.

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 her employer for an additional period of time.

While claimant testified to being “stressed out” at work and mentioned in passing that she had lost weight, the focus of her testimony about why she left work was the physical disarray of the store and the

failure of the manager to clean it up. Audio at ~21:14, ~23:05, ~23:51. Claimant did not describe any specific impacts that the stress she experienced from workplace conditions had on her mental or physical health, or contend that her health caused her to leave work when she did.

The lack of tidiness and physical organization in the workplace may have aggravated and displeased claimant. However, claimant did not describe any cognizable harm that resulted to her from that alleged messiness, or show by a preponderance of the evidence that it created a grave circumstance for her. Many employees work in a workplace that they would like to, but cannot refurbish or organize to their liking and, absent other factors, do not consider that to be a cause to quit work. With respect to the hours that claimant worked or that she spent at the cash register, claimant also did not show that they were unreasonably onerous, that any cognizable harm resulted to her from those alleged hours, or show any factors from which an objectively grave circumstance may be inferred. Many managerial employees like claimant have to work longer hours than they would like on occasion or to perform tasks that they dislike and, absent the presence of additional factors, they do not consider it sufficient cause to quit work. That claimant attempted to withdraw or rescind her resignation the day after she gave it to the employer corroborates that, as of that day, claimant did not consider her circumstances to be grave.

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

**DECISION:** Order No. 18-UI-121277 is affirmed.

J. S. Cromwell and S. Alba;  
D. P. Hettle, 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.

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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