

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-1185**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On September 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 162646). Claimant filed a timely request for hearing. On October 1, 2018, ALJ Shoemake conducted a hearing, continued on November 30, 2018, and on December 7, 2018, issued Order No. 18-UI-120940, affirming the Department's decision. On December 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asserted that the hearing proceedings were unfair, the ALJ expressed "hostility" toward her and denied her request to have counsel represent her. We reviewed the hearing record in its entirety, which shows that the ALJ was not hostile toward claimant and never denied a request by claimant to have counsel of her choosing represent her. The ALJ explained that although claimant had the right to have an attorney of her choice represent her in the proceeding, and that she could make that request, having that right did not mean that a request to continue the hearing to obtain counsel after it started would be automatically granted. Transcript (October 1, 2018 hearing) at 21-25. Thereafter, claimant did not make a specific request for a continuance to obtain counsel and did not retain counsel to represent her at the continued hearing on November 30, 2018. The record shows that the ALJ inquired fully into the matters at issue, did not express hostility toward claimant and gave all parties a reasonable opportunity for a fair hearing as required by ORS 657.270(3) and OAR 471-040-0025(1) (August 1, 2004). We considered claimant's remaining arguments, to the extent they were based on the hearing record, when reaching this decision.

**FINDINGS OF FACT:** (1) Cascade Head Ranch Homeowners Association employed claimant as a part-time manager from January 2010 to July 15, 2018. As manager, claimant frequently worked and spoke with the employer's president.

(2) Claimant had asthma, bronchitis and allergies with which she was diagnosed in her childhood.

(3) The employer's office in which claimant and other employer staff worked was located in a building where a water treatment system was housed. Around February 2016, a pipe broke and the building was

flooded, which caused an exposure in the employer's office to residual chlorine gas from the water treatment system. Claimant believed that the chlorine gas exposure caused her to experience frequent sore throats but did not seek medical treatment for her symptoms or conditions due to her exposure at that time or thereafter. The exposure was serious enough that the employer temporarily moved the office and its staff into a rented a trailer. Shortly thereafter, the employer arranged for office repairs, including the installation of a ductwork system that essentially resolved the problem of chlorine gas exposure.

(4) Prior to June 30, 2018, claimant had a good working relationship with the employer's president (DD) but a "strained relationship" with the employer's vice-president (AF). Transcript (October 1, 2018 hearing) at 7; Transcript (November 30, 2018 hearing) at 5-6. Claimant believed that AF did not support a merit pay increase that had been proposed for her, she and AF had disagreements concerning the employer's governing documents, and AF was one of several board members who voted to send the employer's staff back into the office sometime after the flooding incident, which claimant resented. Because AF also believed that the relationship with claimant was strained during the two years prior to June 30, 2018, AF had as little contact as possible with claimant.

(5) During the two weeks prior to the employer's annual meeting on June 30, 2018, the employer's treasurer (DH) discussed with claimant that DD intended to step down as president and that AF would probably be voted in as the new president. After claimant expressed that she might resign if that happened, DH offered to set up a meeting between herself, claimant, and AF to be held shortly after the annual meeting, the purpose of which was "to get off on the right foot and...try to establish [a] better relationship" between claimant and AF. Transcript (November 30, 2018 hearing) at 8. Initially, all three individuals agreed to participate in the proposed meeting, but shortly before June 30, 2018, claimant decided she would not attend such a meeting.

(6) On June 30, 2018, at the employer's annual meeting, DD stepped down as president and AF was voted in as the next president, his term to begin on July 1, 2018.

(7) On July 2, 2018, claimant sent an email to all of the employer homeowners that stated in relevant part:

Due to the change in leadership of the CHRHA Board, I will be resigning from my position of manager of the Cascade Head Ranch Homeowners Association...my last day working for the HOA will be July 15th, 2018.

Exhibit 1.

(8) On July 5, 2018, claimant received a letter from an anonymous source that she characterized as "hate mail" because the author described her resignation announcement as "wonderful news about the wicked witch leaving," likened her to "Hitler" and used foul language throughout the author's tirade about her term as the association's manager. Exhibit 1. Claimant considered the letter "extremely offensive," but it was the only negative communication out of the many that she received from homeowners about her planned resignation. Transcript (October 1, 2018 hearing) at 26.

(9) On July 15, 2018, claimant resigned because she concluded she could not work with AF.

(10) Claimant was not advised by a medical professional to quit her job.

**CONCLUSIONS AND REASONS:** We agree with the Department and ALJ. Claimant voluntarily left work without 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). Claimant occasionally suffered from asthma, bronchitis and allergies and had since childhood. More likely than not, those conditions were permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for the employer for an additional period of time.

Claimant left work because she believed she could not work with the incoming president AF, whom she considered threatening and intimidating based on her prior interactions with him. However, when asked why she considered AF intimidating or threatening, claimant could not recall any specific instances other than his reported recommendation to deny her a merit pay increase, unspecified disagreements with her over the association’s governing documents and his reported vote that the office staff return to their original office after repairs had been made following the burst pipe that flooded the office with chlorine-infused water. Transcript (October 1, 2018 hearing) at 9-10. Claimant did not describe any instances involving physically threatening behavior, the use of foul language or even a raised voice by AF. Although claimant’s interactions with AF were unpleasant for her and made her feel uncomfortable, she admitted at hearing that she chose to resign rather than attend a meeting proposed by both the treasurer, whom she considered a confidante, and AF, the express purpose of which was “to get off on the right foot and...try to establish [a] better relationship” between claimant and AF. Transcript (November 30, 2018 hearing) at 8. Claimant explained that she rejected the meeting because the thought of working with AF “became [too] disturbing [for her] to stay.” Transcript (November 30, 2018 hearing) at 10. Viewed objectively, claimant failed to show that attending the proposed meeting and attempting to establish a working relationship with AF in good faith was not a reasonable alternative to summarily quitting on July 2, 2018.

Claimant also asserted that she had continuing exposure to chlorine gas in the office and implied that it was a factor in her decision to resign. Transcript (October 1, 2018 hearing) at 14-20. However, she admitted she never sought testing or treatment for chlorine gas exposure or requested a leave of absence or an accommodation from the employer based on her exposure because she “wasn’t that sick.” *Id.* She also admitted that the air quality in the office became better after the duct work was installed. The employer’s treasurer clarified that claimant never expressed any concerns about air quality after the duct work installation. Transcript (October 1, 2018 hearing) at 18, 36.

Finally, claimant implied that the anonymous hate mail letter she received on July 5, 2018 affected her decision to resign. She stated that “if [she] hadn’t received...that letter,” she “would have gladly tried to work things out if anybody would have tried to work them out with me.” Transcript (October 1, 2018 hearing) at 28. However, as previously described, claimant rejected the offer by DH and AF to meet

with her to attempt to work things out between her and AF shortly *before* submitting her resignation notice on July 2.

For these reasons, claimant failed to meet her burden to show that her concerns constituted reasons of such gravity that no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments would have concluded that she had no reasonable alternative but to quit her job when she did. Accordingly, claimant voluntarily quit work without good cause, and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

**DECISION:** Order No. 18-UI-120940 is affirmed.

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

**DATE of Service: January 31, 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 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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