

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0092**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 10, 2018 the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 142924). Claimant filed a timely request for hearing. On January 22, 2019, ALJ Seideman conducted a hearing, and on January 25, 2019 issued Order No. 19-UI-123460, reversing the Department's decision. On January 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Staples The Office Superstore LLC employed claimant from October 8, 2016 until November 12, 2018, last as sales manager.

(2) On November 12, 2018, claimant and the general manager participated in a conference phone call with a human resources representative. The human resources representative was interviewing claimant as part of an investigation into complaints that were filed against claimant by two subordinate employees. Claimant thought the representative was rude to her in tone and manner during the call, interrupted her often, and did not listen.

(3) Approximately an hour into the conference call, claimant was very upset about how the human resources representative was treating her. Claimant abruptly stood up and stated into the phone, "I'm done." Audio at ~8:50, ~18:25. The representative responded to claimant that she accepted claimant's statement as a resignation. The representative then addressed the general manager and told him to get claimant's work keys. Claimant gave her keys to the general manager. The representative asked claimant if she wanted to submit a written resignation and claimant said that she did not. Claimant then left the office. Immediately after claimant departed, the employer began to process claimant's work separation.

(4) Approximately fifteen minutes after leaving the office, claimant returned. Claimant told the general manager that she did not want to quit. The general manager told claimant it was too late for her to take back her resignation because the employer had already processed it.

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

The employer contended that claimant voluntarily left work. However, claimant contended that the employer discharged her when the general manager refused to allow her to withdraw her resignation. The first issue this case presents is the nature of 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) (January 11, 2018). 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).

Although claimant did not state outright to the human resources representative or the general manager that she was quitting or resigning during the phone conference, the reasonable implication of her statement that she was “done,” in the context of the call, was that she was quitting. The subsequent comment of the human resources representative that she accepted claimant’s resignation and her request to the general manager that he should obtain claimant’s work keys clearly indicated that the employer construed claimant’s statement as a resignation. Notably, claimant did not state at that time that those employer representatives had misunderstood her intention and, without indicating that she had not intended to quit her job or that she just needed a break from the meeting, claimant turned over her keys to the general manager, which was reasonably interpreted as confirmation that claimant intended to quit work when she said she said she was “done.” As of the end of the conference call on November 12, 2018, claimant had objectively manifested that she was leaving work.

While claimant attempted to withdraw her resignation when she returned to the general manager’s office fifteen minutes after she had indicated that she was leaving work, the general manager’s refusal to allow her to do so did not transform the work separation from a voluntary leaving into a discharge. Where a claimant who has given notice of a resignation later attempts to rescind the resignation, and the employer refuses to allow rescission, the work separation remains 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 November 12, 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). 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.

Although claimant considered the human resources representative rude, unpleasant, and dismissive of her during the conference call on November 12, 2018, she did not describe any behaviors that reasonably could be construed as abusive, oppressive or that reasonably gave rise to a grave situation. Claimant did not show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-123460 is affirmed.

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

**DATE of Service:** February 20, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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