

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0116**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130221). Claimant filed a timely request for hearing. On January 29, 2019, ALJ Janzen conducted a hearing, and on January 30, 2019, issued Order No. 19-UI-123637, affirming the Department's decision. On February 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) Rogue Valley Oral & Maxillofacial Surgery employed claimant as a billing and insurance coordinator from February 15, 2018 to November 28, 2018. The employer's owner was its only oral surgeon and its office manager was the owner's spouse.

(2) When the employer hired claimant, the manager told her that her hours would not be reduced during the weeks the owner and the manager were off work, unlike the hours of other staff. However, after a few months, like the other staff, her hours were reduced an average of 16 hours per month when the owner and his wife were not in the office.

(3) In June 2018, the owner was the on-call surgeon at the local hospital and performed surgery on a trauma patient involved in a motor vehicle accident. Thereafter, the owner spoke to claimant about billing for his services and proceeded to tell her how to file the claims. However, based on claimant's prior experience as a billing agent for a hospital regarding similar claims, claimant believed the owner's instructions were wrong. When she diplomatically attempted to correct him regarding the claims process, he responded by yelling at and berating her about not knowing how to do her job, which upset

claimant. Later that day, claimant spoke to the manager about the incident and that she considered the owner's behavior hostile. The manager apologized for his behavior, asked her to "let it go," and said, "it's not personal, it's just him." Transcript at 17-18. Claimant did not speak to the owner about the incident, but on or about July 10, 2018, gave the employer two weeks' notice that she was resigning based on the owner's hostile behavior toward her in June and her hours being cut contrary to the representation made to her at hire. However, the manager talked her out of resigning by explaining that the situation would improve with time.

(4) In September 2018, in a staff meeting concerning incoming calls from other doctors, the owner notified the staff that if a doctor wanted to speak with him while he was attending to another patient, even in surgery, he wanted the staff to interrupt him and let him know. However, he warned them that based upon the circumstances, he might scream at them to "get the '[fuck]' out of here" because his patients were more important than the staff's feelings. Transcript at 18.

(5) On November 27, 2018, the owner dispersed the staff one hour early without pay so that he and his wife could prepare gift boxes at home.

(6) On November 28, 2018, the owner asked a staff member to retrieve some letterhead which she and the other staff did not know existed and could not find. The owner eventually came to the front office demanding the letterhead and was told that it could not be found. He asked a staff member who was searching through a cabinet for letterhead to move, and retrieved it from a box in a lower shelf of the cabinet. He then sarcastically stated to the staff, "This is letterhead. If you work in an office you should know what letterhead is." Transcript at 21. After further criticizing the staff about not knowing how to do their jobs, he dispersed them.

(7) Later on November 28, the owner instructed claimant to deliver a gift box to a financial planner and to then inquire about some issues the employer was having with the employer's payroll system. Claimant did so and upon returning, told the manager what the owner had instructed her to do, and that she had acted as requested. The manager became upset, almost to the point of tears, because she handled the payroll rather than the planner, and did not want to contradict the owner. She then instructed claimant to take an hour lunch break immediately, which upset claimant because her lunch break was typically 30 minutes and she did not want to lose a half hour's pay. The manager then raised her voice to claimant to take the hour break, which claimant eventually did. When claimant returned from her lunch break, she resigned due to the "hostile work environment" and her reduced hours. Transcript at 5.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant voluntarily left work without 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. Leaving work without good cause includes leaving work due to a reduction in hours, unless the individual establishes that continuing to work substantially interfered with a return to full time work or that the cost of working exceeded the amount of remuneration received. OAR 471-030-0038(5)(e).

To the extent claimant quit work due to the reduction in her hours that occurred during the last six months of her employment, claimant failed to establish good cause for doing so. Claimant asserted that a reduction in her hours averaged 8 to 16 hours per month. Transcript at 14-15. Claimant testified that she was able to and did look for other work during the last few months of her employment, and the record fails to show that her reduction in hours substantially interfered with her return to full time work. Nor does the record show that the cost of working for the employer exceeded the amount of remuneration claimant received. When specifically asked by the ALJ, she admitted that the cost of transportation to and from work did not exceed her pay. *Id.* Claimant failed to show that leaving work due to a reduction in her hours was with good cause.

Claimant also asserted that she left work, in part, because her work environment was “hostile.” Transcript at 5. A hostile environment at work can, under some circumstances, amount to good cause to quit a job. *See McPherson v. Employment Division*, 285 Or 541, 557 (1979) (claimants not required to “sacrifice all other than economic objectives and . . . endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits”). However, on this record, claimant failed to meet her burden to show that the owner’s attitude or behavior toward her was “oppressive.”

Although claimant established that the owner’s criticism and berating of her in June 2018 that she did not know how to do her job was ill-mannered, disrespectful, and uncouth, she did not quit because of it, although she had threatened to do so. And although claimant also asserted that the owner “cussed” at her at that time, when questioned about what exactly he had said, she did not describe any foul language that he had used. *Cf.* transcript at 17; 22-23. Claimant’s description of other incidents of “hostile” behavior by the owner involved criticisms made to the entire staff about not knowing how to perform their jobs rather than made to claimant individually. To the extent the manager’s raised voice toward claimant on November 28, 2018 constituted the last example of the employer’s hostile behavior toward her, claimant explained that the manager was highly emotional at that time and claimant did not describe any other incidents involving the manager.

Although the work environment described by claimant undoubtedly was unpleasant, it is not unusual for employees to encounter unjust criticism and rude behavior from coworkers or supervisors in the work place. Viewed objectively, claimant failed to meet her burden to show that no reasonable and prudent employee in claimant’s circumstances would have continued to work for the employer beyond November 28, 2018.

Claimant voluntarily left 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. 19-UI-123637 is affirmed.

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

**DATE of Service: March 8, 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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