

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0146**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144530). Claimant filed a timely request for hearing. On January 24, 2019, ALJ A. Mann conducted a hearing, and on January 25, 2019, issued Order No. 19-UI-123409, affirming the Department's decision. On February 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Nookies Restaurant & Sports Bar employed claimant from November 6, 2014 until November 4, 2018 as the employer's general manager.

(2) Since 2015, claimant had worked an average of 60 or more hours per week. *See* Exhibit 3. Claimant was a salaried employee and earned \$1,145.44 per week rather than an hourly wage. The employer kept no records of how many hours claimant worked. Claimant set her own work schedule, but the employer assigned her employment duties.

(3) On October 5, 2018, the employer's payroll/human resources manager informed claimant that the employer would be conducting an audit, and that during the audit, which the employer told claimant would last seven to ten days, claimant was to complete the daily books and deposits and provide that daily information to the payroll/human resources manager. The manager told claimant, "they [need] to be done by you and only you during the audit so that we [can] keep track of one person doing them. . . . [Y]ou [can] do it and just work it into your schedule." Transcript at 45. The payroll/human resources manager informed claimant that, if claimant had a day off work, the employer expected her to complete the daily books and deposits from claimant's day off on the day she returned to work. It took claimant

approximately ten additional hours per week to complete the daily books and reports for each week, so that claimant was working 70 hours per week during the audit.

(4) As part of the audit, the non-managerial employees were expected to return completed surveys to the employer's payroll/human resources manager by October 9, 2018. When all the employees had not returned the surveys by October 15, 2018, the payroll/human resources manager told claimant to contact the employees and instruct them to turn in the surveys. Claimant did so. By October 20, 2018, all the employees had still not turned in their surveys, delaying the completion of the audit. On October 20, 2018, claimant asked the payroll/human resources manager and the owner how much longer the audit would last, and neither gave claimant an estimate of how much longer the audit would last.

(5) During mid-October 2018, claimant experienced high blood pressure such that she had to go to an emergency room for medical treatment. Exhibit 2. Claimant also experienced heightened stress during October because of her daughters' health conditions.

(6) On October 21, 2018, claimant gave the employer notice that she would quit work on November 6, 2018. After claimant gave notice that she would quit work, the owner offered claimant work as kitchen staff. Claimant did not accept the owner's offer of work.

(7) On November 6, 2018, claimant voluntarily left work because she was not willing to continue working 70 hours per week without knowing when she would no longer have to work extra hours completing the daily books and deposits.

(8) The employer received the remaining completed surveys from its employees two weeks after claimant's employment ended and completed the audit sometime thereafter.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant voluntarily left work with 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). 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 the standard for showing good cause for leaving work is modified if a claimant demonstrates that he or she had a permanent or long-term physical or mental impairment, there is insufficient evidence in the record to show that claimant had such impairment. Claimant referred to her high blood pressure, but the ALJ did not ask claimant about her health condition, and claimant did not describe whether the condition was permanent or long-term. Therefore, claimant did not establish that she had a long-term or permanent impairment. However, even if she had, the outcome of this decision would remain the same.

In Order No. 19-UI-123409, the ALJ concluded that claimant did not establish that she faced a situation of such gravity that she had no reasonable alternative but to quit because she had the reasonable alternative of reducing her work hours on her own or asking the employer to convert her to an hourly employee, rather than a salaried one.<sup>1</sup> The ALJ also reasoned that claimant could have continued working the additional hours until the audit ended, or accepted the employer's offer to work in the kitchen as reasonable alternatives.<sup>2</sup> We disagree that the proposed alternatives were reasonable.

Claimant left work because the employer gave her an additional daily task that, as found by the ALJ, increased claimant's weekly hours from 60 to 70 hours per week, and the employer did not tell claimant how much longer she would have to complete the additional duty. In Order No. 19-UI-123409, the ALJ found that the additional duty of completing the daily books and deposits resulted in claimant working 70 hours per week.<sup>3</sup> The employer did not keep records of claimant's hours, and both the employer's witnesses testified that they did not know how many hours claimant worked or when she came to work and left work. Transcript at 19, 37, 39. Despite having no records of claimant's hours, the employer's witnesses asserted that claimant did not work 70 hours after the audit began. Transcript at 18, 40. However, we are persuaded by the preponderance of claimant's evidence that she worked 70 hours per week after the audit began. Claimant's testimony about the number of hours she worked was corroborated by the wage summaries since 2015 showing claimant worked at least 60 hours per week throughout that time (Exhibit 3). Moreover, the payroll/human resource manager's testimony showed that the daily books and deposits would take claimant 1 to 1.5 additional hours each day to complete, which would result in an increase of 7 to 10.5 hours per week.

At the time claimant quit, she faced a grave situation. Claimant had been working 60 or more hours per week since 2015, and the new job duty given to her when the audit began increased her hours to 70 per week, with no firm end date to the increased hours. The ALJ found claimant could have reduced her work hours on her own, but there is no evidence in the record that claimant knew or should have known that she could stop performing other duties to compensate for the additional hours necessary to complete her new duty. To the contrary, the payroll/human resources manager told claimant that only claimant was permitted to do the daily records during the audit, and that she should "work it into her schedule." The record does not show that the employer ever told claimant to stop doing any of her regular duties or shift them to another employee.

Nor do we find that working until the audit was completed was a reasonable alternative for claimant due to the impact of the stress on her health. By October 21, 2018, the audit had already taken longer than the employer had originally told claimant. The record shows that the employer did not get the forms it needed from the employees to complete the audit until two weeks after claimant left work, which shows that the audit continued for at least another month after claimant gave notice. Claimant experienced health problems related to stress that caused her to have to go to the emergency room and it was unreasonable for her to continue working indefinitely for 70 hours per week. Although some of the stress was undoubtedly due to her daughters' health problems, that does not lessen the additional impact of the extra hours on claimant's health.

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<sup>1</sup> Order No. 19-UI-123409 at 3.

<sup>2</sup> Order No. 19-UI-123409 at 3.

<sup>3</sup> See Order No. 19-UI-123409 at 2.

The employer asserted at hearing that he would have been “open to the idea” of claimant working as an hourly employee. Transcript at 20. However, the record does not show what claimant’s hourly wage would be. More importantly, working as an hourly employee instead of a salaried employee would not reduce the number of hours claimant worked, or the impact of those additional hours on claimant. Working as an hourly employee was therefore not a reasonable alternative for claimant.

Nor was the kitchen work offered by the employer a reasonable alternative for claimant because, based on this record, it was not suitable for her. ORS 657.195 provides that in determining whether any work is suitable for an individual, the Department shall consider, among other factors, the prior training, experience and prior earnings of the individual. Claimant had always worked for the employer as a general manager, which suggests that kitchen work was not suitable given her prior training, experience and prior earnings.

For the foregoing reasons, we conclude that claimant voluntarily left work with good cause. Claimant therefore is not disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 19-UI-123409 is set aside, as outlined above.

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

**DATE of Service:** March 15, 2019

**NOTE:** 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.

**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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