

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0149**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 13, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112520). Claimant filed a timely request for hearing. On January 17, 2019, ALJ Seideman conducted a hearing, and on January 25, 2019, issued Order No. 19-UI-123439, concluding claimant voluntarily left work with good cause. On February 8, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** The ALJ described and admitted Exhibits 1 and 2 into evidence without objection by the parties. Audio Record ~ 3:00 to 5:30. However, the ALJ failed to mark the exhibits as such. As a clerical matter, we have identified the exhibits based on the ALJ's description of them, marked them as Exhibit 1 and Exhibit 2, and, for informational purposes, attached copies of the exhibits to decisions mailed to the parties.

**FINDINGS OF FACT:** (1) The Bensimon Center LLC, a plastic surgery center, employed claimant as a facility assistant from June 2017 to November 23, 2018.

(2) In 2016, claimant's fiancé, an actress and model, met an individual at a professional networking event, the Portland Fashion and Style Awards (PFSA). In September 2017, claimant's fiancé was raped by that same individual. Claimant's fiancé did not attend the PFSA event later in 2017 because she remained traumatized by the assault. Later in 2017 her accused rapist won a fashion award that was to be presented to him at the 2018 PFSA event, sponsored in part by claimant's employer.

(3) After her trauma, claimant's fiancé attended professional therapy and counseling sessions and sought and obtained a restraining order against her accused rapist. In July 2018, claimant also began receiving counseling from his fiancé's therapist and attended therapy sessions together with his fiancé.

(4) The 2018 PFSA event was scheduled to be held on November 4, 2018. Claimant's fiancé decided to attend the event with claimant as part of her attempt to resume her former life, network with industry members and overcome her 2017 trauma. Claimant notified the employer's manager, who was aware of

the trauma claimant's fiancé had experienced, that he and his fiancé intended to attend the event and that she was considering staging a protest. Claimant purchased tickets to the event for both himself and his fiancé.

(5) On November 4, 2018, after claimant and his fiancé arrived at the event, the event coordinator approached his fiancé and told her she would have to leave because her presence was making the accused rapist uncomfortable. Claimant's fiancé showed the coordinator the restraining order and after the coordinator showed it to an employer manager, the coordinator returned and said that the police had been contacted and had stated that she [claimant's fiancé] would have to leave because it was a work event. The coordinator added that if they did not leave, the police would be summoned and the police would remove them from the premises. Claimant's fiancé felt re-traumatized by that demand because she had been the rape victim and had obtained the restraining order and yet she was the one being forced to leave the event. After contacting the police, claimant and his fiancé learned that no such instruction by the police had ever been given to the coordinator and that she, apparently in conjunction with the employer's manager, had lied to them. Thereafter, claimant's fiancé became fearful of leaving her residence alone for any reason.

(6) After that event, claimant and his fiancé met with the therapist and disclosed what had occurred on November 4 and how it had affected claimant's fiancé. The therapist considered the employer's behavior in that incident to be so traumatic and "egregious toward [claimant's] partner" that she recommended that claimant quit the employment to preserve his relationship with his fiancé. Exhibit 2.

(7) On November 23, 2018, claimant followed the recommendation of his therapist and resigned from his employment.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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.

From claimant's unchallenged description of the nature and severity of the trauma claimant's fiancé experienced, both initially and after she was directed to leave the November 4 event by the event coordinator, after her apparent consultation with the employer manager whom claimant had initially spoken to, it can only be concluded that claimant's own situation was grave. His ability to preserve his relationship with his fiancé was dependent upon his following the recommendation of their joint therapist and leaving the employer. Viewed objectively, claimant did not have any reasonable alternative to quitting when he did if he wanted to preserve that relationship. On this record, claimant demonstrated that no reasonable and prudent person in his circumstances, given the relationship issues that had

developed following the November 4 event, the apparent deceit by the employer, and the professional recommendation that had been given to him would have continued to work for the employer for an additional period of time.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of his work separation.

**DECISION:** Order No. 19-UI-123439 is affirmed.

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

**DATE of Service:** March 11, 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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