

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0252**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 103631). Claimant filed a timely request for hearing. On February 11, 2019, ALJ Shoemake conducted a hearing at which the employer did not appear, and on February 19, 2019, issued Order No. 19-UI-124875, affirming the Department's decision. On March 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument. The argument contained new information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering that information during the hearing as required by OAR 471-041-0090(2) (October 29, 2006). For that reason, claimant's new information was not considered when reaching this decision.

**FINDINGS OF FACT:** (1) RSL Salem, LLC employed claimant in an assisted living and memory care facility from September 2013 until December 31, 2018. Claimant worked in sales and marketing for the assisted living community in the facility. Claimant's job was to promote the community to senior citizens and their families and to persuade them that the seniors should become residents.

(2) Sometime before August 2018, claimant became concerned that the community was not providing the quality of care that she represented to prospective members' families. Families often would contact claimant after their family member had moved in to complain that the level of services was markedly inferior to that which claimant had described. Claimant came to feel as if she were misrepresenting the community to families when she promoted its benefits, and was deceiving them. Claimant contacted the executive director of the community several times about quality of care issues, but she did not perceive that the executive director did anything to improve the quality of care.

(3) In August and October 2018, claimant contacted the employer's home office about her concerns. On October 30 and 31, 2018, the home office sent out an investigator to determine the validity of claimant's concerns and how best to address them. In November 2018, claimant again contacted the home office

about her concerns. Later in November 2018, the home office put a plan in place to remedy the problems that claimant had identified at the community.

(4) After the plan to improve the employer's performance was implemented, a senior moved into the community. However, after the move in was completed, there were no appropriate physician's orders on file, no care plan and no medications on site for the senior. Due to these issues, the senior did not receive medications for one day.

(5) In early December 2018, in an exchange of text messages, claimant contacted a human resources representative at the employer's home office about continuing issues with the care that was being provided to seniors in the community. Claimant described those issues, including the senior who had moved in without physician's orders, a care plan, and medications. The representative told claimant that it appeared that the plan adopted in November to remedy the problems was not being followed. Later, claimant sent a text notifying the representative that she was quitting effective December 31, 2018 because she could not work under the conditions as they were in the community. The representative told claimant that "they were going to make things right" and "they were going to make some changes," because the executive director of the community was not doing her job to ensure that the employer's plan to correct deficiencies in care was implemented. Audio at ~ 17:21.

(6) On December 31, 2018, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** 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). 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.

It appears that claimant was genuinely distressed about the discrepancy between the representations she made to families about the quality of care seniors would receive in the community and what they actually received, as well as about the deficiencies in the care that was being provided to the seniors. However, once claimant stopped raising her concerns with the executive director and sought help from the employer's home office, her concerns were investigated and a plan was formulated to correct them. Claimant did not show or suggest that the employer's plan, if followed, was inadequate to remedy the problems that claimant perceived.

When the incidents that led claimant to resign arose in approximately November 2018, claimant had no reason to think that a complaint to the home office that the community was not following the plan so recently formulated by the home office to rectify quality of care deficiencies would be ignored, or that the home office would not take further corrective steps. Indeed, the comments of the human resources representative to whom claimant spoke suggested that the employer was committed to its remedial plan

and that, if needed, would discipline the executive director to ensure the plan was followed. A reasonable and prudent person, whose complaints to the employer's home office had already led to the formulation of a plan to remedy the deficiencies in care, would have sought further intervention from the home office in lieu of leaving work. Because claimant did not pursue that reasonable alternative, she failed to show good cause for leaving work when she did.

Claimant did not show good cause for leaving work. She is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-124875 is affirmed.

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

**DATE of Service:** April 12, 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 desisyon.

## 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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