

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0255**

*Reversed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct within 15 days of a planned voluntary leaving without good cause (decision # 74651). Claimant filed a timely request for hearing. On February 21, 2019, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on February 27, 2019 issued Order No. 19-UI-125429, reversing the Department's decision and concluding claimant was not disqualified from benefits. On March 5, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Kingsview Asset Management employed claimant to perform clerical work from approximately July 2018 until January 7, 2019. The employer's workplace was located in Grants Pass, Oregon.

(2) Claimant lived with her significant other in Medford, Oregon. Claimant commuted approximately 36 miles one way between her residence and the workplace in Grants Pass. Claimant's commute took approximately 45 minutes each way.

(3) In December 2018, claimant's significant other had a serious flare of rheumatoid arthritis. As a result, the significant other required assistance in dressing and performing other activities of daily living. Claimant and the significant other could not afford to hire a caregiver to provide the needed assistance. Although the significant other had an adult son who lived in the Medford area, it was not convenient for the son to assist the significant other because the son worked evening and graveyard shifts, and needed to sleep during the morning and daytime hours when the significant other required assistance.

(4) Claimant decided to look for work closer to Medford. Claimant thought eliminating the commute to Grants Pass would give her time to assist the significant other in the mornings before she needed to report for work and would allow her to quickly respond if the significant other had an emergency during her workday. Sometime before January 4, 2019, claimant interviewed for a position with a law firm in Medford. Claimant felt that the law firm was going to offer her the job, and would do so sometime on or

before January 11, 2019. She decided to resign from her job with the employer, but rescind her resignation if she did not receive a job offer by January 11<sup>th</sup>.

(4) On Friday, January 4, 2019, claimant left a written resignation notice for her supervisor, who was not in the office that day. In the notice, claimant stated that her last day would be January 18, 2019.

(5) On Monday, January 7, 2019 after claimant reported, claimant's supervisor told her that the employer was discharging her effective that day. It was the employer's policy not to allow a person to work continuing working for any period of time after announcing he or she was going to leave work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause and is disqualified from benefits effective the week of January 13, 2019 (week 03-19). Claimant is eligible to receive benefits for the week of January 6, 2019 (week 02-19).

Claimant's January 4 announcement that she was going to voluntarily leave work on January 18, 2019 was closely followed by the employer's January 7 discharge of claimant. The issue is the proper characterization of the work separation when a discharge intervenes that interrupts a planned voluntary leaving from actually occurring. ORS 657.176(8) provides that if, after an individual has notified an employer that the individual will leave work on a specific date, the employer discharges the individual no more than 15 days before the planned leaving date, the discharge may be disregarded under certain circumstances. The discharge will be ignored, and separation treated as if only the voluntary leaving had occurred, when the discharge was not for misconduct and the planned voluntary leaving was for reasons that did not constitute good cause. However, the individual is eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date. Because the employer discharged claimant 11 days before her planned leaving, ORS 657.176(8) potentially applies to claimant's work separation.

Order No. 19-UI-125429 stated that ORS 657.176(8) did not apply to claimant's separation because claimant left work to give care to her significant other, which was good cause for leaving work under the circumstances. Order No. 19-UI-125429 at 2-3 fn 1. Based on that conclusion, ORS 657.176(8) was inapplicable to claimant's work separation, and the discharge, which occurred first, was deemed the relevant event for purposes assessing whether claimant was disqualified from benefits. Because the employer did not establish that discharging claimant because she quit work was a discharge for misconduct, the order ultimately concluded that claimant was not disqualified from benefits. Order No. 19-UI-125429 at 2. Order No. 19-UI-125429 was incorrect in concluding that ORS 657.176(8) did not apply to claimant's separation because it relied on an incorrect reason for claimant's planned voluntary leaving. When the correct reason is considered, claimant did not have good cause for leaving work.

Good cause for leaving work is defined in OAR 471-030-0038(4) (January 11, 2018). "Good cause" means, in relevant part, 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). OAR 471-030-0038(5)(a) specifically provides, however, that for purposes of determining whether an individual has left work with or without good cause, if an individual leaves work to accept an offer of other work, good cause exists only if, among other things, that offer is "definite."

Although claimant stated early in her testimony that she left work to care for her significant other, her resignation actually occurred when it did because she felt assured that she would get the job offer from the law firm in Medford. Claimant did not resign until she felt that the job with the law firm was “guaranteed,” and testified that she would have “pulled” her resignation if she did not receive a firm job offer by January 11. Audio at ~13:20, ~13:36. Despite the significant other’s need for care, claimant therefore would not have quit when she did to provide that care if she had not had the prospect of a new job with the Medford law firm. The expectancy of that job, and not caring for the significant other, was the proximate reason that claimant left work when she did.

The job with the Medford law firm was not “definite” when claimant notified the employer on January 4 that she was leaving work. At that time, the law firm had not yet made a job offer to claimant, although she expected to receive the offer sometime on or before January 11, 2019. Audio at ~13:18. Because the job offer had not been yet been issued, let alone finalized, when claimant notified the employer that she was leaving, it was not a “definite” offer of work as that term is commonly understood. As such, the hoped-for job with the Medford law firm was a mere expectancy, and not good cause for claimant to leave work when she did under OAR 471-030-0038(5)(a). Given that claimant’s leaving was not for good cause, to determine whether ORS 657.176(8) is fully applicable to this work separation and the January 7 discharge should be disregarded, it must be considered whether that discharge was or was not for misconduct.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. OAR 471-030-0038(3)(a) defines misconduct, in relevant part, as a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, or an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest. OAR 471-030-0038(1)(c) defines wanton negligence, in relevant part, as indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee. The employer has the burden to prove claimant’s misconduct by a preponderance of the evidence. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976).

The only information explaining why the employer may have discharged claimant on January 7 came from claimant. According to claimant, the employer did not allow her to work during her two-week notice period because it was the employer’s practice to end an employee’s employment on the date that the employee gave notice of his or her resignation. Audio at ~14:23. It was not a willful or wantonly negligent violation of the employer’s standards for claimant resign from work. The evidence in the record is not sufficient to show by a preponderance of the evidence that claimant engaged in any misconduct for which the employer discharged her. On this record, the employer did not discharge claimant for misconduct.

Because claimant was discharged, not for misconduct, within 15 days of a planned voluntary leaving that would not have been for good cause, the discharge is disregarded and the work separation is considered as if the voluntary leaving had occurred under ORS 657.176(8). Based on claimant’s lack of good cause for leaving work on the planned date of January 18, 2019, claimant is disqualified from

benefits beginning the week of January 13, 2019 (week 03-19). Claimant is eligible to receive benefits for the week of January 6, 2019 (week 02-19).

**DECISION:** Order No. 19-UI-125429 is set aside, as outlined above.

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

**DATE of Service:** April 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

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## 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 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.

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