

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0286**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 18, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 123017). The employer filed a timely request for hearing. On February 28, 2019, ALJ Frank conducted a hearing at which claimant did not appear, and on March 7, 2019 issued Order No. 19-UI-125927, reversing the Department's decision and concluding that claimant voluntarily left work without good cause. On March 18, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) A Loving Touch In Senior Care LLC employed claimant as an office manager from sometime in 2017 until October 12, 2018.

(2) Sometime before October 1, 2018, the employer gave up its commercial office space and split functions between an office in the owner's home and one in claimant's home. The relocation was due to claimant's need to provide childcare for her daughter and the owner's need to care for her ill husband. Claimant's house was very near to the owner's house.

(3) By October 1, the owner thought claimant was distracted by a home-based event planning business that she also was running, and was not paying adequate attention to her work duties for the employer while working at home. On October 1, the owner spoke with claimant about working out of the owner's home, rather than her own home. Claimant agreed to work out of the owner's home office. The owner told claimant to bring to the employer's computer, printer and files that she had been using to the owner's house.

(4) On October 4, 2018, the owner called claimant about the office equipment and files. During this call, claimant told the owner that she did not want to work out of the owner's home office. Claimant stated this reluctance was due to not wanting to use a toilet in someone else's home. Claimant provided no other reason for declining to work in the owner's home. The owner told claimant that she considered claimant to be quitting. Claimant confirmed that she was quitting, but stated that she was willing to train

her replacement. Sometime before October 9, 2018, claimant and the owner agreed that claimant's last day would be October 12, 2018. Also before October 9, the owner hired a replacement for claimant.

(5) On October 9, the owner went to claimant's house to retrieve the employer's office equipment and files that were in claimant's possession. While the owner was at claimant's house, claimant told the owner that she had reconsidered and wanted to continue working for the employer. The owner told claimant that she had already hired a replacement and would not allow claimant to cancel the resignation.

(6) On October 12, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause.

Although claimant told the owner on October 4 that she was leaving work, she tried to revoke that resignation on October 9. The owner's refusal to allow claimant to withdraw or revoke her resignation did not change the work separation from the voluntary leaving that it was initially. *See Counts v. Employment Department*, 159 Or App 22, 976 P2d 96 (1999) (where a claimant who gave a notice of resignation later attempts to rescind the resignation and the employer refuses to allow rescission, the work separation remains a voluntary leaving). Despite claimant's attempt to withdraw her resignation, claimant's work separation was a voluntary leaving on October 12, 2018.

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.

Claimant did not appear at the hearing to explain why she decided to leave work. According to the testimony of the owner, claimant expressed to her that she was quitting because she objected to using the owner's home toilet. There is insufficient evidence in this record to show that using the owner's toilet created a grave circumstance for claimant, and the fact that claimant belatedly tried to rescind her resignation suggests that she did not view it as a matter of gravity. There are no other discernible, non-speculative reasons in the record for why claimant left work when she did. On this record, the evidence does not show that grave reasons motivated claimant to leave work.

On this record, claimant did not have good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-125927 is affirmed.

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

**DATE of Service: April 17, 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 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.

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