

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0339**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 21, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 63659). Claimant filed a timely request for hearing. On March 19, 2019, ALJ Seideman conducted a hearing, and on March 26, 2019, issued Order No. 19-UI-127079, affirming the Department's decision. On April 1, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDING OF FACT:** (1) Restaurants Unlimited, Inc. employed claimant from December 13, 2018 until January 7, 2019 as a salad chef.

**CONCLUSIONS AND REASONS:** Order No. 19-UI-127079 is reversed and this matter is remanded for further proceedings.

The first issue in this case is the nature of claimant's work separation. If the employee could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

Order No. 19-UI-127079 concluded that claimant's work separation was a voluntary leaving, and that claimant voluntarily left work without good cause.<sup>1</sup> The order states that "claimant's behavior in the hearing [was] considered," because claimant "yelled . . . liar, liar" several times throughout the hearing, and where the testimony conflicted, found facts in accordance with the employer's testimony.<sup>2</sup> However, although claimant called one of the employer's witnesses a "liar," and he did so out of order, his

<sup>1</sup> Order No. 19-UI-127079.

<sup>2</sup> *Id.* at 2.

assertion was consistent with his own testimony, which conflicted with the witness's testimony. Claimant's assertion that the witness was a "liar" therefore was not a basis upon which to conclude that claimant was a credible witness. Nor does the record otherwise show that claimant's testimony was illogical, inconsistent or lacking in credibility. Based on the record, the order under review erred in finding that the employer's testimony was more credible than that of claimant.

Additional information is necessary to determine the nature of the work separation. The testimony from both parties was that claimant's last day of work was January 6, 2019. However, although the employer's executive chef testified that claimant quit on January 6, the employer's human resources generalist testified that claimant's employment ended on January 7, 2019. The ALJ should ask the employer why claimant's work separation date was January 7 if claimant allegedly quit work on January 6. The ALJ should also ask the human resources witness when she received information about claimant's work separation, and what information she received.

Claimant testified regarding a managers' meeting on January 6. The ALJ should ask the employers' witnesses if there was a managers' meeting on January 6, if the witnesses attended the meeting, whether the managers' discussed claimant at the meeting, and what they discussed regarding claimant. The executive chef met with claimant on January 6, 2019. The ALJ should ask if that meeting was planned in advance of January 6, and why the meeting took place that day. The ALJ should ask claimant and the executive chef to repeat chronologically exactly what was stated during their final meeting together on January 6. Did the executive chef tell claimant anything regarding what was discussed at the manager's meeting? If yes, what information was repeated to claimant? The ALJ should inquire of the parties about the employer's plans for claimant's employment, the terms of the "plan of action" the executive chef alleged he was reviewing with claimant, and what the executive chef told claimant regarding consequences if claimant did not meet the expectations stated in the plan.

During the January 6, 2019 meeting between claimant and the executive chef, claimant allegedly stated, "I'm going to go ahead and just go," before the end of the meeting, and left the executive chef's office. Audio Record at 18:06 to 18:08. The ALJ should inquire about what occurred after claimant made that statement. Was there further discussion between claimant and the executive chef? Claimant alleged that the executive chef discharged him. The ALJ should ask if claimant asked why and when he was being discharged. The ALJ should ask the parties what claimant did when he left the meeting, and if he left the workplace immediately. Did claimant speak with anyone else at work after he met with the executive chef? The ALJ should inquire what claimant's schedule was that day and what time he left work. The ALJ should ask if claimant was scheduled to work after January 6, and if there was any additional communication between claimant and the employer after the meeting on January 6.

We also find that the record was not sufficiently developed to support a decision as to whether claimant's work separation was disqualifying for purposes of unemployment insurance benefits. The intent of this decision is not to constrain the ALJ to asking only questions related to the specified subject matter. Therefore, in addition to asking the questions suggested, the ALJ should ask any follow-up questions he deems necessary or relevant to the nature of claimant's work separation and whether or not it should be disqualifying. The ALJ should also allow the parties to provide any additional relevant and material information about the work separation, and to cross-examine each other as necessary.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); see *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the record is insufficient for a determination of the nature of the work separation and whether it was disqualifying, Order No. 19-UI-127079 is reversed, and this matter is remanded for development of the record.

**DECISION:** Order No. 19-UI-127079 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: May 7, 2019**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-127079 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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.

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