

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0382**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 103504). The employer filed a timely request for hearing. On April 10, 2019, ALJ Seideman conducted a hearing at which claimant failed to appear, and issued Order No. 19-UI-127914 concluding that claimant voluntarily left work without good cause. On April 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sterling Jewelers, Inc., now known as Signet Jewelers, employed claimant as a Jared Jewelry specialist manager from July 11, 2017 until December 20, 2018.

(2) On August 28, 2018, claimant went on leave for medical reasons. On September 21, 2018, the employer authorized claimant's leave under the Family and Medical Leave Act (FMLA). The employer approved the leave for the period of August 28, 2018 through November 1, 2018.

(3) By letter dated October 22, 2018, the employer informed claimant that his approved leave was scheduled to expire on November 1, 2018 and that, if he was able to return to work after that date, he needed to submit a completed fitness for duty form. The letter further stated that if claimant was unable to return to work as of November 1, 2018, he needed to contact the employer about extending the leave. On November 1, 2018, the employer received a note from a treating physician stating that claimant's leave needed to be extended. Shortly thereafter, the employer sent claimant a Department of Labor form that he needed to complete to extend the leave. The employer never received the completed extension form back from claimant.

(4) By letter dated November 19, 2018, the employer informed claimant that his approved leave had expired on November 14, 2018 without the employer having received a request for a leave extension or a completed fitness for duty form. The letter informed claimant that if the employer did not receive a completed fitness for duty form or a request for a leave extension by November 26, 2018, the employer

would process claimant's work separation as of the last date of claimant's approved leave. The employer never received any paperwork or other response to the November 19, 2018 letter.

(5) By letter dated December 26, 2018, the employer informed claimant that it had processed claimant's work separation due to his failure to return a completed fitness for duty form or an updated leave certification from a healthcare provider, and his failure to contact the employer about changes to his leave. The letter indicated that claimant's work separation occurred at the end of his approved leave, which was on December 20, 2018.

(6) On December 20, 2018, claimant voluntarily left work.

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

The first issue in this case is whether claimant voluntarily left work or was discharged. OAR 471-030-0038(2) (January 11, 2018) sets out the standard for characterizing the separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a). 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).

Here, the employer informed claimant in the November 19 letter that it was going to process his separation if he did not submit paperwork or contact it by November 26. While such language would indicate that the employer was unwilling to allow claimant to continue to work, the employer's proposed action was conditional, and would only occur if claimant failed to fulfill the conditions in the letter. Because the employer notified claimant in advance of the conditions he needed to meet to avoid severing the work relationship, claimant is assumed to have understood that failing to act in one of the requested ways would terminate the work relationship. As a result, by not turning in the paperwork specified in the November 19 letter or contacting the employer when he knew the consequences of his failure to act, claimant manifested an intention to end the work relationship and an unwillingness to continue working for the employer. Because claimant was the first party to take unequivocal steps that resulted in ending the work relationship, his work separation was a voluntary leaving as of December 20, 2018, which was the final date of his approved leave.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he 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 his employer for an additional period of time.

Claimant did not appear at the hearing and did not present evidence about the reason(s) he quit. No reasons for why claimant may have decided to quit are discernible from this record. Accordingly, there is insufficient information in the record to show by a preponderance of the evidence that claimant left

work for 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. The record therefore fails to show claimant had good cause to quit work, and he is disqualified from receiving unemployment insurance benefits based on this work separation.

**DECISION:** Order No. 19-UI-127914 is affirmed.

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

**DATE of Service:** May 16, 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**

ទោរទោស – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ ប៉ុន្តែវាជាភារកិច្ចរបស់អ្នកប្រើប្រាស់។ បើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**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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