

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0451**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 92225). Claimant filed a timely request for hearing. On April 2, 2019, ALJ M. Davis convened a hearing and continued it to allow the parties an opportunity to review documents. On April 17, 2019, ALJ Frank conducted the continued hearing, and on April 25, 2019 issued Order No. 19-UI-128830, affirming the Department's decision. On May 10, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not certify that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Williaya Behavioral Health employed claimant as chief financial officer (CFO) from December 3, 2018 until January 31, 2019.

(2) Claimant initially applied for a position of senior accountant working under the CFO. When the employer's chief executive officer (CEO) told claimant that the employer expected to pay a salary of \$55,000 per year for the accountant position, claimant rejected that amount and stated that he wanted \$66,000 per year. Around that time, the employer learned that its current CFO was retiring as of December 31, 2018. The employer then offered the CFO position to claimant at a salary of \$66,000 per year. Claimant accepted. At that time, claimant was satisfied with the \$66,000 yearly salary. The employer deferred hiring for the senior accountant position that claimant had initially applied for.

(3) In December 2018, the CEO had ongoing discussions with claimant and the departing CFO to determine whether claimant would assume all the finance and administrative duties that previously had been handled by the CFO or whether some duties should be allocated to other staff or outsourced. As of

early January 2019, no decision had been reached. The CEO would consider adjusting claimant's salary to take account of any increased duties that he assumed.

(4) On Friday, January 4, 2019, claimant was performing payroll duties and noticed that other members of the employer's leadership, including the CEO, chief human resource officer, chief clinical officer, chief compliance officer, and chief medical officer, all earned between \$14,000 and \$100,000 more than he did per year. Of these positions, three were occupied by females and two were occupied by males. Claimant concluded that the employer was discriminating against him by the compensation he received.

(5) After learning of the pay received by other leadership members, claimant sent an email to the CEO on January 4 stating that he was quitting effective January 31, 2019. The reason that claimant gave for leaving was that he and his immediate family planned to move closer to other family members. On Sunday, January 6, 2019, claimant sent an email to the employer's chief human resource officer stating that he was "following up" on his resignation to inform her that "[a]s CFO and member of the senior leadership team I need to be compensated fairly. There are Labor Laws for fair pay and equal opportunity against unfair pay. \*\*\*\* I need this wrong made right effectively [sic] January 1<sup>st</sup>, 2019 or my resignation notice is effective immediately." Exhibit 2 at 8.

(6) On Monday, January 7, 2019, the CEO sent claimant an email in response to his notice of resignation and his email to the chief human resource officer. The email stated that the CEO had thought that he and claimant were in the process of determining the duties that claimant would assume as CFO, that he had intended to adjust claimant's salary to reflect the duties that claimant ultimately assumed and he was "disappointed that we were not able to get to that point collaboratively." Exhibit 2 at 9. The email stated that the CEO wanted to meet with claimant to address his concerns on Thursday, January 10, 2019, and that claimant was placed on paid administrative leave and his access to the employer's electronic systems was discontinued until those concerns were resolved. Exhibit 2 at 9. At around that time, the employer began looking at its compensation structure to determine if it was discriminatory.

(7) On Tuesday, January 8, 2019, claimant filed a complaint with the Washington Department of Labor & Industries alleging that the employer had violated the Equal Pay Opportunity Act by, among other things, providing unequal compensation to him based on gender, prohibiting wage discussions between employees and retaliating for exercising protected rights. Exhibit 2 at 11.

(8) On Wednesday, January 9, 2019 at 10:05 a.m. claimant sent an email to the CEO stating that he was not going to meet with the CEO on January 10, as requested. In the email, claimant stated that he had filed a complaint with governmental agencies about the employer's pay practices.

(9) On January 9, 2019 at 5:07 p.m., the chief human resource officer sent claimant an email explaining that he had been placed on administrative leave because it was the employer's usual practice to do so when an employee raised serious workplace concerns. The email also stated that the employer would continue claimant on administrative leave until January 31, 2019, as he had requested. The email further stated that the employer believed its pay practices were in compliance with all laws.

(10) On January 31, 2019, 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 they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS

657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4) (December 23, 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 their employer for an additional period of time.

Claimant might have had good cause to leave work if he had shown that the employer’s pay practices had violated the law, including the Washington Equal Pay Opportunity Act<sup>1</sup>. Claimant did show that he was paid less than other members of the employer’s senior leadership and that at least some of those leadership positions were occupied by females. However, he did not show that, as CFO, the duties of his position were comparable to those of the female members of senior leadership. Nor did claimant show that his pay was less than that of the females in senior leadership due to his gender, or that any pay differential was not the result of neutral job factors. *See* RCW 49.58.010. Claimant also did not show when or how the employer ever prohibited him from disclosing his wages to other employees. *See* RCW 49.58.040(1). Claimant did not show, as well, that the employer’s motive was to retaliate against him for exercising rights under the Equal Pay Opportunity Act when it placed him on *paid* administrative leave and denied him access to the employer’s systems. Claimant did not rule out that it was the employer’s standard practice to do so when an employee had raised a serious workplace complaint. *See* RCW 49.58.040(2). On this record, claimant did not show that the employer had violated the Equal Pay Opportunity Act by the pay he received or other actions it took.

However, even if claimant’s pay as compared to that of other members of senior leadership would have caused a reasonable and prudent person to consider that their situation was grave, claimant did not show that he had no reasonable alternative other than to leave work. While claimant was aware of the human resources department, and presumably aware of its role to intervene in and attempt to resolve disputes between the employer and an employee, claimant did not seek its assistance in rectifying the unfairness he perceived in his pay before he resigned on January 4, 2019. Claimant did not show that a reasonable and prudent person likely would have considered it futile to seek the intervention of the human resources department. Claimant also refused to discuss the issue of his pay with the CEO when the CEO requested on January 7 that claimant meet with him about this matter. Claimant also did not show by preponderance of the evidence that it would have been futile for him to attempt to resolve those concerns in collaboration with the CEO. Because claimant did not show that no reasonable alternatives were available to him other than to quit, claimant did not meet his burden to show good cause for leaving work when he did.

Claimant did not establish good cause for leaving work when he did. Claimant is therefore, disqualified from receiving unemployment insurance benefits.

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<sup>1</sup> The Equal Pay Opportunity Act is found at Washington Revised Code (RCW) 49.58.010 and subsequent statutory sections. RCW 49.58.020 prohibits wage discrimination based on gender, but does not prohibit a wage difference that, among other things, is not gender-based, is based on good faith or bona fide job related factors, or is not between individuals employed in jobs requiring similar skill, effort and responsibility. RCW 49.58.040(1) prohibits employers from requiring that an employee not disclose his wages to other employees and RCW 49.58.040(2) prohibits an employer from retaliating against an employee for exercising their rights under the Equal Pay Opportunity Act.

**DECISION:** Order No. 19-UI-128830 is affirmed.

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

**DATE of Service: June 14, 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**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**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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