

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0465**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71933). Claimant filed a timely request for hearing. On May 7, 2019, ALJ Schmidt conducted a hearing, and on May 9, 2019, issued Order No. 19-UI-129614, affirming the Department's decision. On May 14, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Beginright Inc., a temporary staffing agency, employed claimant from February 12, 2019 until March 5, 2019. The employer assigned claimant to work as a drafter for its client, Parts and Pieces.

(2) Claimant had a permanent hearing loss in both his ears.

(3) When claimant began work with Parts and Pieces, the owner of Beginright Inc. told claimant that claimant's onsite supervisor at Parts and Pieces "doesn't like change very much," when discussing with claimant that he was using a newer version of a drafting program than the supervisor used. Transcript at 9.

(4) After working for Parts and Pieces for a week, claimant felt that his onsite supervisor treated him in a "confrontational" and "belittling" manner. Transcript at 7. On one occasion, when the supervisor noticed that claimant used a copying technique to complete a drawing, the supervisor stated to claimant, "All I've seen you ever do is copy. Do you know how to draw[?]" Transcript at 7. Claimant felt the statement was "belittling" because he had been a drafter for 20 years. Transcript at 7. On occasion, if claimant did not know how to do something, the supervisor would use a tone that claimant found "belittling" when he asked claimant, "Don't you know how to [do the task]?" Transcript at 8. The supervisor made statements to claimant that he considered confrontational "almost every other day." Transcript at 11. Claimant also felt "belittled" when the supervisor told him, "Come over here so you [can] hear me," in apparent reference to claimant's hearing loss. Transcript at 8.

(5) Claimant also felt “uncomfortable” when the onsite supervisor, on two or three occasions, walked up behind claimant while he was drawing and put his hands on claimant’s shoulders. Transcript 7, 9. The last time he put his hands on claimant’s shoulders was at the beginning of March 2019.

(6) Beginning in late February and continuing until March 5, 2019, claimant began to experience “high anxiety” and “dread” because of work. Transcript at 13. While at work, claimant would “almost tremble” around his supervisor. Transcript at 13. Claimant could not afford financially to seek medical attention for the anxiety symptoms he experienced.

(7) Claimant did not say anything to the supervisor in response to the supervisor’s statements or conduct that he found “confrontational” and “belittling.” Transcript at 7.

(8) On March 5, 2019, claimant quit work with Parts and Pieces because of the onsite supervisor’s conduct toward him. Parts and Pieces had continuing work available for him on March 5.

(9) Claimant did not say anything to the employer about how the onsite supervisor behaved toward him until after he quit work at Parts and Pieces. Immediately after he quit work, he told the employer’s staffing consultant about the supervisor’s conduct. If an employee was dissatisfied with working conditions with one of the employer’s clients, the employer customarily would arrange a meeting between the employee and the onsite staff “where everybody would meet and discuss the situation.” Transcript at 24.

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

It is first necessary to address the nature of the work separation, which was with a temporary agency. If the employee could have continued to work for the same employer for an additional period, the work separation is a voluntary leaving. OAR 471030-0038(2)(a) (January 11, 2018). In the case of individuals working for a temporary agency, the employment relationship is deemed severed at the time that a work assignment ends. OAR 471-0300038(1)(a). Claimant’s employment relationship with Beginright Inc. was therefore severed when he quit work on March 5, 2019 with the employer’s client, Parts and Pieces.

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). Claimant had hearing loss, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with hearing loss who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time. Claimant also had anxiety symptoms, but the record does not show that his anxiety symptoms were a permanent or long-term impairment as defined at 29 CFR §1630.2(h)

Claimant quit work when his onsite supervisor made comments toward claimant that claimant considered “confrontational” and “belittling” during the last two weeks of his employment, which

caused claimant to feel “high anxiety” and “dread,” and when the supervisor put his hands on claimant’s shoulder, which made claimant feel “uncomfortable.” Claimant faced a grave situation due to the supervisor’s conduct and statements to him and the resulting anxiety the supervisor caused him. Statements to claimant “every other day” regarding his work ability and referencing his hearing loss understandably caused claimant to feel anxiety due to work. However, the behavior that claimant described was not so grave that no person with hearing loss would not have continued to work for their employer for an additional period of time.

Claimant was not able financially to afford to seek medical care for his anxiety symptoms. Thus, seeking medical care was not a reasonable alternative for claimant. Order No. 19-UI-129614 also stated that asking Beginright Inc. for a different work assignment would have been a reasonable alternative to quitting for claimant. Because Beginright Inc. was a temporary agency, however, a reassignment would still have been a work separation, and therefore would not have been a reasonable *alternative* to quitting.

Although those alternatives were not reasonable for claimant under the circumstances, the record shows that reporting the situation at Parts and Pieces to the employer prior to quitting work was. The same day he quit work, claimant told a staffing consultant why he was dissatisfied working with the supervisor at Parts and Pieces. He did not explain or show why he could not reasonably have made the same complaint prior to quitting, and allow the employer the opportunity to resolve his concerns. The staffing coordinator testified that had claimant informed them of his dissatisfaction prior to quitting, the employer would have arranged a meeting with the client to discuss the situation and presumably try to resolve it. Transcript at 24. Claimant did not show that it would have been unreasonable or futile to complain to the employer before he quit, or that his situation was so grave that no reasonable and prudent person with hearing loss would have complained to the employer and allowed the employer an opportunity to try to improve claimant’s circumstances with the client before quitting.

Claimant did not show that he quit work with good cause. He therefore is disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 19-UI-129614 is affirmed.

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

**DATE of Service: June 18, 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 desisyong ito.

## 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 الإستئناف 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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