

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0474**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72949). Claimant filed a timely request for hearing. On April 29, 2019, ALJ Wyatt conducted a hearing, and on May 7, 2019, issued Order No. 19-UI-129454, affirming the Department's decision. On May 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Outdoors RV Manufacturing, Inc. employed claimant as a production worker in its cabinet assembly shop from late February, 2019 to March 11, 2019.

(2) In October 2017, claimant was tested and diagnosed with carpal tunnel syndrome (CTS).

(3) During the two weeks of her employment, claimant was required to perform her job duties using power hand tools, such as a staple gun, approximately nine hours per day. Operating such tools for that long aggravated her CTS to the extent that it limited the functioning of her arms and it became necessary for her to use arm braces at night to help her sleep. Her symptoms became so severe that it also prevented her from lifting and otherwise properly caring for her infant child.

(4) On March 11, 2019, claimant spoke with her supervisor and requested a transfer to a position that did not require the use of power hand tools nine hours per day. Her supervisor told her, "In this type of work it is hard to find anything that does not flare up carpal tunnel." Audio Record ~ 13:00 to 13:30. However, he told her that he would explore potential alternatives with his own supervisor and assistants but that doing so "would take me a little bit of time." Audio Record ~ 15:00 to 15:15. Claimant understood from their conversation that there was no other position in the plant that would not be harmful to her CTS. Claimant also knew that the supervisor had hired her specifically to perform cabinet production work because the employer was shorthanded in that department, and it was unlikely that he would transfer her to any other position.

(5) Because claimant had been hired in late February and was a probationary employee, she had no medical or other leave available to her.

(6) Claimant quit work on March 11, 2019 because her working conditions worsened her CTS.

**CONCLUSIONS AND REASONS:** Claimant voluntarily quit work with 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). Claimant had carpal tunnel syndrome, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with an impairment 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.

Order No. 19-UI-129454 found that claimant’s supervisor “told claimant that he would need some time to consider whether there was work for claimant that would be less aggravating to [her] carpal tunnel condition,” and concluded that claimant voluntarily left work without good cause, reasoning that although “claimant faced a grave situation” with the worsening of her CTS, a reasonable and prudent person with her impairment would not have quit before the employer determined whether “potentially effective alternatives [to the job she had been performing] existed.” Order No. 19-UI-129454 at 3. Although the record establishes that claimant’s situation was grave, it does not establish that a reasonable and prudent person with claimant’s impairment in her circumstances would have waited to quit until after the employer determined whether “potentially effective alternatives [to the job she had been performing] existed.”

The record shows that claimant’s CTS was progressively worsening because of claimant’s job activities, working continuously with power hand tools. Notably, claimant’s symptoms had worsened to the point where she lost functioning in her arms, had difficulty sleeping, and could no longer lift and properly care for her infant child. Claimant’s situation was grave.

Based on the severity of claimant’s condition, the record fails to show that waiting an indefinite amount of time for the employer to explore whether “potentially effective alternatives” to her job existed was a reasonable alternative to quitting when she did. Continuing to work with a progressively worsening condition that had already limited her ability to use her arms and care for her infant child while waiting indefinitely for nothing more than a hypothetical job transfer, on its face, was not a reasonable alternative to quitting.

The record also fails to show that any other reasonable alternative was available to claimant. Claimant was a probationary employee with no accrued medical or other leave, and requesting a leave of absence therefore was not an option. Even assuming for the sake of argument that the employer had been willing to support a leave of absence for claimant, any such leave would have been unpaid. The Court of Appeals has held that a protracted unpaid leave of absence is generally not a reasonable alternative to

leaving work. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (under different circumstances, an unpaid leave of four months was not a reasonable alternative to quitting work).

Viewed objectively, no reasonable and prudent person with claimant's impairment in her circumstances would have continued to work for the employer for an additional period of time. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Order No. 19-UI-129454 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** June 20, 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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<sup>1</sup> This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.



# 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**

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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