

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0494**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct connected with work (decision # 121556). Claimant filed a timely request for hearing. On May 9, 2019, ALJ Frank conducted a hearing, and on May 17, 2019, issued Order No. 19-UI-130123, concluding claimant voluntarily left work without good cause. On May 31, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Northwest Commercial Carpet & Floor Cleaning, Inc. employed claimant as a carpet and floor technician from September 18, 2012 until February 27, 2019.

(2) In February 2019, the employer received information that indicated that claimant may have been committing theft of time by claiming wages for time he had not actually worked.

(3) On February 26, 2019, the employer's sales and operations manager directed claimant to attend a meeting later that day to discuss the issue of time theft and that it was "serious." Audio Record ~ 23:40. Claimant was confused about why the manager had accused him of time theft and told the manager that he could not attend the meeting that day because of a prior appointment. However, he agreed to attend a noon meeting the next day, after which the manager told him to bring his work keys and uniforms to the meeting. The manager did not tell claimant that his employment was terminated.

(4) On February 27, 2019, claimant arrived at the employer's premises an hour late due to inclement weather and a bus problem, and left his uniforms and keys in a bag outside the front door. Claimant did not enter the building or explain to the manager why he was late. Claimant sent the employer a text message confirming he had delivered the requested items to the front door and returned home. Had claimant entered the building, the manager would have questioned him then and there about the information that other employees had provided the manager, and then determined whether to take disciplinary action against claimant.

(5) On February 27, 2019, claimant quit work, believing the manager had already discharged him.

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

**Work 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) (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).

The parties disagreed on the nature of the work separation. Claimant asserted that he believed that he was discharged when the manager directed him to bring his keys and uniforms with him to the meeting on February 27. Audio Record ~ 18:30 to 20:30. However, the employer's witness asserted that no discharge decision had been made because the manager wanted to hear first what claimant had to say about the information obtained from other employees. Audio Record ~ 14:30 to 16:00. She also asserted that the manager typically directed employees in such situations to bring in their keys and uniforms because in the employer's experience, if discharge was the end result of an investigation, employees often refused to turn in employer property. Audio Record ~ 23:00 to 24:30. Both parties agreed that claimant had not been told that he had been discharged, and the employer's witness asserted that had claimant entered the building on February 27, he would be talked to then and there. Audio Record ~ 14:30; 20:30; 23:30 to 25:30. Although claimant could have, and did, mistakenly conclude that he had been discharged, he could just the same have reasonably concluded that the manager wanted to meet with him without discharging him. Because claimant could have continued to work for the employer for at least the investigatory meeting on February 27, the work separation was a voluntary leaving.

**Voluntary Leaving.** 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). 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 voluntarily left work because he mistakenly believed the employer had already discharged him. However, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant's circumstances, would not leave work based only on a suspicion that he had been fired, especially when he was confused about why he was suspected of committing time fraud, without pursuing the reasonable alternative of speaking to the manager and explaining his circumstances. Here, on February 27, 2019, claimant had the option to enter the employer's premises and attend the meeting or explain why he was late, and if necessary, request another opportunity to respond to the manager's allegations.

Because claimant had reasonable alternatives to walking away without meeting with the manager and quitting work when he did, he voluntarily left work without good cause. Accordingly, claimant is disqualified from receiving unemployment insurance benefits on the basis of his work separation until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Order No. 19-UI-130123 is affirmed.

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

**DATE of Service: July 2, 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**

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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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