

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0525**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 165643). Claimant filed a timely request for hearing. On May 6, 2019, ALJ Shoemake conducted a hearing, and on May 20, 2019, issued Order No. 19-UI-130216, affirming the Department's decision. On June 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

The ALJ admitted Exhibit 1 into evidence, but failed to mark it as such. As a clerical matter, we have identified the exhibit based on the ALJ's description of it, marked it as Exhibit 1, and, for informational purposes, attached copies of the exhibit to orders mailed to the parties.

EAB considered the entire hearing record, including Exhibit 1, and claimant's written argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) West Coast Real Estate Services, Inc. employed claimant as a property management assistant from August 1, 2017 to March 20, 2019.

(2) By January 2019, claimant had had occasional problems with coworker L and frequent problems with coworker D, whom claimant considered barely competent, dishonest and divisive. *See*, Exhibit 1 at 12-13. Early that month, claimant met with the employer's owner primarily about her difficulties with coworker D. During their meeting, the owner became frustrated with claimant's criticisms of her coworkers and threatened to move her work station to a back room if she could not be "nice" and "not attack" her coworkers. Exhibit 1 at 13. Although the owner did not move claimant's work station, claimant considered the owner's tone and comment to her demeaning, particularly since he made it within earshot of coworker D. Shortly thereafter, on January 12, 2019, claimant wrote the owner an email explaining her frustration, her feeling of being unappreciated and her desire that the owner know the truth about what went on in the office, which she then attempted to explain. Exhibit 1 at 12-13. On January 15, 2019, she sent him a text message complaining about an "inside joke" allegedly played on her by L and D. Exhibit 1 at 14. The owner did not respond directly to claimant regarding her email and

text message but met generally with his employees and instructed them to both communicate and work with each other better as a team.

(3) On March 19, 2019, the owner returned to the office around lunchtime and learned that coworker D had left for her lunch break before claimant had returned from her lunch break, leaving the front office without coverage. After they had both returned, the owner spoke with them both and told them that leaving the office without coverage would be unacceptable in the future. Shortly thereafter, the owner requested a separate meeting with claimant during which he criticized her for not telling him that she had returned late from her lunch break. Claimant explained that coworker D had left for lunch early but apologized for being late. The owner told her that claimant needed to be “accountable” for her actions, to which claimant responded by stating that she had not returned late “on purpose” and inquiring if the owner had ever been late before. Audio Record ~ 9:30 to 12:00. The owner took offense at claimant’s response and further criticized her for asking him that question. When the owner spoke, he was upset and raised his voice at claimant but did not yell or scream at her. After the owner was finished speaking, claimant gave the owner two weeks’ notice of her intent to quit. Claimant remained at work and finished out the day.

(4) On March 20, 2019, before the office opened, claimant left her office key and a note for the owner at work. In the note, claimant explained that she was quitting immediately because she believed the owner had treated her poorly by “yelling” at her, “screaming” at her, and “making false accusations” against her. She added that she was “mentally and emotionally unable to return.” Exhibit 1 at 15, 16.

**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.

The parties’ testimony differed regarding their private meeting on March 19, 2019. Claimant asserted that the owner “yelled at [her] at the top of his lungs,” which she described as “horrible,” but the owner asserted that although he was admittedly “upset,” he did not yell or scream at her, which was contrary to his nature. *Cf.* Audio Record 11:00 to 12:00; 20:00 to 21:00; and 23:00 to 24:00.

The hearing record provides no reason to believe or disbelieve the testimony of either party over the other regarding the owner’s conduct toward claimant during the March 19 meeting. It is more likely than not that the discrepancies in their testimony occurred because the parties honestly perceived or recollected the event differently. Either way, there was nothing about either party’s testimony that made either party inherently more or less credible than the other, and the evidence about what happened at the March 19 meeting was, at best, equally balanced. Where the evidence is equally balanced, claimant, the party with the burden of persuasion, has failed to meet her burden of proof on that issue. We therefore

conclude that although it is likely that the owner raised his voice at times during the March 19 meeting with claimant, he did not yell or scream at her.

Many employees work with supervisors with whom they do not get along or do not like, or at times are difficult and cause them stress, and most of those employees do not leave work due to their supervisors' conduct. Claimant did not describe any behavior by the owner, either in January or in March, that could reasonably be characterized as a type of abuse or oppression that might give rise to good cause for leaving work. *See e.g., McPherson v. Employment Division*, 285 Or 541,557, 591 P2d 1381 (1979) (claimants not required to "sacrifice all other than economic objectives and \*\*\* endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits). Claimant did not assert that the owner ever used foul language when criticizing her and although the owner apparently threatened to move claimant to a back office in January when he accused her of being combative with coworkers, there was no evidence that he did so. Although claimant also asserted that the owner's behavior caused her to get sick, she admitted she never asked for a day off for that reason and presented no evidence that the behavior described upset her to the extent that she sought medical or emotional treatment for it. Audio Record ~ 28:45 to 30:00. Claimant failed to meet her burden to show that no reasonable and prudent person in her circumstances, despite receiving occasional and perhaps even unjustified criticism for her work activities, would have continued to work for their employer for an additional period of time

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Order No. 19-UI-130216 is affirmed.

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

**DATE of Service:** July 15, 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 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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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