

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0600**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152110). Claimant filed a timely request for hearing. On June 10, 2019, ALJ Seideman conducted a hearing, and on June 12, 2019, issued Order No. 19-UI-131540, affirming the Department's decision. On July 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the hearing record.

**FINDINGS OF FACT:** (1) Keystone Pacific LLC employed claimant from June 1, 2018 until November 26, 2018, last as a production manager in the employer's food production room. On June 1, 2018, Keystone Pacific LLC acquired a food production plant where claimant had worked for 22 years.

(2) The employer required employees to work for four consecutive weeks for at least thirty hours per week to qualify for employer-provided health insurance. At the time the employer acquired the production plant where claimant worked, it told employees they could work additional hours to qualify for health insurance. The employer offered opportunities to work preparing for an audit, reviewing documents and records, plant cleaning, facility maintenance and product testing. Claimant did not work thirty hours per week consistently, and did not qualify for health insurance. There were other employees who worked thirty or more hours per week who received health insurance.

(3) On July 10, 2018, the employer provided claimant with a job description.

(4) Claimant was certified to monitor certain food safety controls in the production room of the plant where she worked. In that plant, safety guidelines provided that an employee with claimant's certification be onsite and that they check the pasteurizer temperature one time per hour. The employer required claimant to take a thirty-minute lunch during her shifts, during which time she "punched out" and was required to be relieved of all duties. Transcript at 5. Claimant punched out, but sometimes would go into the production room during her lunch break to check the pasteurizer temperature. The employer did not direct claimant to do so. Claimant believed that food safety required that another employee with the same certification as claimant be in the production room during claimant's lunch break to "make sure that things are still running safely and under all the regulations." Transcript at 5. There were other certified employees onsite at the plant.

(5) Claimant told two different employer representatives that she thought the employer should have a certified employee in the production room during her lunch breaks. The employer told claimant they would train additional employees so they were also certified. By September 2018, the employer had plans to have other employees become certified.

(6) On November 6, 2018, claimant reviewed and signed a directive from the employer to take a thirty-minute lunch break during which she was relieved of all work duties. Exhibit 3.

(7) Claimant felt the work environment was "somewhat hostile" because of a new plant manager hired by the employer. Transcript at 11. On November 11, 2018, the employer directed claimant to have the new plant manager work with claimant on projects in the production room. Claimant thought the new plant manager disliked working in the production room.

(8) On November 26, 2018, claimant voluntarily left work because she was allegedly required to work during her lunch break, was allegedly not given health insurance because she is female, was allegedly not given her job description, and was allegedly mistreated by the plant manager.

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

As a preliminary matter, the parties' testimony regarding certain facts was irreconcilable. For example, the parties' testimony was in direct conflict regarding whether claimant worked more than 30 hours per week for four consecutive weeks, whether she was offered that opportunity, and whether the employer gave claimant a job profile. Nor was there independent evidence from either party that tended to outweigh or disprove the other party's testimony. Moreover, there is no reason apparent from the record to doubt the credibility or accuracy of the witnesses' testimony. Where, as here, the evidence on disputed issues is evenly balanced, the uncertainty in the evidence must be resolved against claimant since she was the party who carried the burden of persuasion in this voluntary leaving case. *See Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Accordingly, the testimony of the employer's witnesses is accepted when it is in conflict with that of claimant and forms the basis for the findings of fact in this decision.

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.

To the extent claimant left work because she was allegedly required to work during her lunch break, claimant did not meet her burden to show that she left work with good cause. Claimant was on notice from the employer that the employer required her to take a thirty-minute lunch break during which time she was relieved of all work duties. The employer directed claimant to do so, and claimant signed an acknowledgement of that directive on November 6, 2018. Exhibit 3. Moreover, claimant provided no evidence that the employer directed her to work during her lunch or knew that she checked the production room during her lunch. Exhibit 3. To the contrary, the preponderance of the evidence shows that the employer did not permit claimant to take time from her lunch break to monitor the production room. Nor did claimant show by a preponderance of the evidence that she had to check the production room for food safety. The record shows that the temperature needed to be checked once per hour, and that another certified employee was onsite. Moreover, the employer was training additional certified employees. Claimant did not show she faced a grave situation because she allegedly had to work during her lunch break, and accordingly did not show that she had good cause for leaving work for that reason.

To the extent claimant left work because she allegedly did not receive health insurance because she is female, claimant did not meet her burden to show that she left work with good cause. The record shows claimant did not satisfy the employer’s requirement to qualify for health insurance, and was not offered health insurance for that reason. Claimant did not show that the employer made decisions or offered opportunities that favored men or adversely affected claimant because of her gender. Accordingly, claimant did not show that she left work for good cause because she did not receive health insurance from the employer.

To the extent claimant left work because of how the plant manager treated her, claimant did not meet her burden to show that she left work with good cause. Claimant asserted that the environment was “somewhat hostile” working with the new plant manager. Transcript at 11. Claimant’s mere allegation of mistreatment did not show the type of abuse that would be considered “oppressive” and establish good cause to leave work. *McPherson v. Employment Division*, 285 Or 541, 591 P2d 1381 (1979) (claimants need not “sacrifice all other than economic objectives and, for instance, endure racial, ethnic, or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the work from unemployment benefits”; the law “does not impose upon the employee the one-dimensional motivation of Adam Smith’s ‘economic man’”).

To the extent claimant left work because she was not given her job description, claimant did not meet her burden to show that she left work with good cause. The employer showed that it gave claimant her job description on July 10, 2018, and claimant testified that she did not recall if she received it then. Transcript at 15. Even assuming, *arguendo*, that claimant did not receive her job description, the record does not show that such a working condition would have created a situation of such gravity that claimant would have good cause to leave work when she did.

Claimant quit work without good cause. She is disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Order No. 19-UI-131540 is affirmed.

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

**DATE of Service:** August 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 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.

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