

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0601**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 134501). Claimant filed a timely request for hearing. On April 18, 2019, ALJ Snyder conducted a hearing, and on April 26, 2019 issued Order No. 19-UI-128913, affirming the Department's decision. On April 30, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On June 6, 2019, EAB issued Appeals Board Decision 2019-EAB-0424, reversing Order No. 19-UI-128913 and remanding the matter for additional evidence. On June 18, 2019, ALJ Snyder conducted a hearing at which the employer did not appear, and on June 26, 2019 issued Order No. 19-UI-132361, again affirming the Department's decision. On July 1, 2019, claimant filed an application for review with EAB.

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Ingredient Incorporated employed claimant on its blends crew from 2016 until January 24, 2019. The employer's predecessor in interest had employed claimant from approximately 2009 until the employer acquired the predecessor.

(2) Claimant was susceptible to stress and did not deal well with it. As an elementary school child, he developed a stomach ulcer from stress.

(3) The job that the blends crew performed was physically and mentally demanding. Heavy lifting was required. If close attention was not paid, the batches that the blends crew produced would be flawed. The blends crew worked under short timelines and sometimes had to stay late to meet the employer's

production goals. The blends crew was small and it was difficult for the employer to keep trained crew members. The employer largely relied on temporary employees to serve as members on the blends crew. The temporary employees usually were not trained.

(4) Sometime before approximately October 2018, claimant was made lead worker for the blends crew. While lead worker, claimant experienced a significant amount of stress. The stress arose from the temporary employees on the blends crew and claimant's need to perform his own work while training the temporary employees, and overseeing and correcting their work. The temporary employees were often unreliable in reporting for work. As lead worker, claimant often had to report for work early to ensure that the work assigned to the blends crew was satisfactorily completed. While he was lead worker, claimant worried excessively about the blends crew and its work. Claimant often could not relax after he left work. Claimant could not sleep because he was preoccupied with the performance of the blends crew. Claimant was unable to enjoy leisure activities.

(5) After claimant became lead worker for the blends crew, he disliked the constant stress of the position. Claimant asked the employer several times if he could leave the lead position and resume working as a regular crew member. When the employer did not take steps to replace claimant as lead, claimant approached an employee who wanted to work the same shift as the blends crew and asked the employee if he was willing to work as lead for the blends crew. The employee agreed, and the employer later agreed to assign that employee to the position of lead worker for the blends crew. Around October 2018, that employee replaced claimant as lead worker, and claimant resumed work as a regular member of the blends crew.

(6) Sometime around January 11, 2019, claimant learned that the person who had replaced him as lead of the blends crew had given notice that he was quitting as of January 25, 2019. As a result, claimant met with the production manager and asked the manager if the employer planned to have him return to the lead position of the blends crew. Claimant told the manager he did not want to be the lead worker in blends and asked if the manager would transfer him to the production department. The manager told claimant that the blends crew was too small and inexperienced to allow him, an experienced crew member, to transfer away from it at the same time the current lead was leaving. The manager told claimant that the employer was going to assign him to the lead position in blends until it could find a replacement for the departing lead worker. Claimant asked several employees who had prior experience on the blends crew if they were willing to return to the blends crew as its lead. None of them was willing.

(7) As the date that the current lead was going to depart approached, claimant realized that if he did not quit work he would become the lead of the blends group. Claimant thought that he would experience the same stress as he had previously when he was the lead worker. Claimant thought stress from the position would again overwhelm him. Claimant also thought that, once he assumed the position as lead, the employer would not move quickly to recruit replacement lead, but would delay as it had done when he had previously tried to leave the lead position.

(8) On January 24, 2019, the day before the then-current lead of the blends crew quit, claimant notified the employer that he was quitting work effective immediately.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left 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). 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.

Order No. 19-UI-132361 concluded that claimant voluntarily left work without good cause. Based on claimant’s testimony that he would have agreed to be the lead worker for two or three weeks and the employer’s testimony that claimant would be in the lead position only temporarily, the order found that claimant did not show good cause for leaving work when he did. The order stated, “Although a permanent switch to the lead worker position may have constituted a grave situation for Claimant, Claimant had the alternative of covering the lead position and continuing his employment for a short period of time, to determine whether the Employer would ask Claimant to remain in the position indefinitely.” Order No. 19-UI-132631 at 3. However, the record fails to support that conclusion.

As a preliminary matter, the order is correct in its conclusion that claimant faced a grave situation if the employer required him to work indefinitely in the lead worker position for the blends crew. The employer did not challenge claimant’s testimony as to working conditions he experienced when he previously was lead worker for the blends group. Claimant’s testimony about the stress he experienced from the position, the negative impacts it had on him and the extent to which it overwhelmed him was compelling and un rebutted. The issue is whether the conclusory testimony of the production manager that claimant’s assignment as lead worker was “temporary,” as opposed to being for an extended time or permanent, was sufficient to eliminate the element of gravity. Order No. 19-UI-132631 at 3; Audio of April 18, 2019 hearing at ~17:50.

Claimant’s unrefuted testimony that the employer previously had not replaced him as lead until he found his own replacement, and his inability to locate a replacement for the currently departing lead, undercuts the order’s implicit assumption that the employer was likely to replace claimant as lead in a reasonably short period of time. This conclusion is strengthened by claimant’s testimony as to the difficulty the employer faced in finding workers qualified for the blends crew and why it relied on temporary workers. While the employer’s production manager testified generally that the employer did not intend to permanently place claimant in the lead position and that claimant’s tenure as lead would be “temporary,” he did not provide information that suggested the employer intended to limit the length of time claimant would remain as “temporary” lead. For example, the production manager did not indicate how long claimant could reasonably have expected to remain in that “temporary” position, or that the employer had specific and concrete plans to ensure that it would promptly recruit a qualified person to replace claimant as lead worker for the blends crew. Claimant’s concern that the employer would not be able to promptly to replace him and he would remain subjected to the stressful conditions of lead worker in the blends group for more than a short interval of time was reasonable. Given the gravity that claimant experienced when he previously was lead for the blends group, a reasonable and prudent person would not have agreed to work as lead for an indeterminate period of time. A reasonable and prudent person

also would have considered it futile to work in the lead position for a short period in the hope that the employer would replace him as lead in a relatively short period of time.

Claimant showed good cause for leaving work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-132361 is set aside, as outlined above.

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

**DATE of Service:** August 1, 2019

**NOTE:** 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.

**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**  
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