

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0651**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 4, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 134343). The employer filed a timely request for hearing. On July 3, 2019, ALJ Schmidt conducted a hearing, and on July 8, 2019, issued Order No. 19-UI-132897, concluding claimant voluntarily left work without good cause. On July 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) Paloma Enterprises Inc. (aka Advantage Solutions) employed claimant from January 31, 2019 until May 7, 2019, last as a merchandiser.

(2) When claimant accepted the merchandiser position on March 25, 2019, the employer told her she would work 20 hours per week setting up displays to promote products in stores. Claimant would receive assignments on an "app" on her telephone and had a week to complete an assignment before it became "overdue." Transcript at 15. The employer would move assignments off an employee's schedule if the employee did not want to complete the assignment. The employer was able to move the assignments before they became overdue. Claimant told the employer she was available to do assignments in Grants Pass, Oregon.

(3) During April and early May 2019, on four to six occasions, claimant arrived at the assigned stores and was unable to set up a display because the stores did not give her permission or the promotional products were not available, resulting in minimal work time such as fifteen minutes. As a result, claimant's net earnings during April 2019 were \$132.

(4) The employer also assigned claimant to work in stores in Oregon locations other than Grants Pass, including Medford and Roseburg.<sup>1</sup> The employer also offered claimant work in Coquille and Gold Beach, which claimant did not accept.<sup>2</sup> Claimant earned \$14.00 per hour, but the employer did not pay claimant for the first hour of her commuting time, and paid a lower pay rate for the remaining travel time. The travel rate was less than what it would cost claimant to travel to Roseburg, Coquille and Gold Beach. Claimant was not available to stay overnight away from home because she had an “elderly husband.” Transcript at 9. Claimant told her supervisor that she needed additional notice for job assignments outside of Grants Pass.

(5) Claimant was satisfied with her supervisor’s communication with her about her availability until the end of April 2019. At that time, the employer hired a new supervisor for claimant.

(6) On May 6, 2019, claimant’s supervisor called claimant for the first time and asked her if she could complete an assignment in Medford that was overdue from another merchandiser. Claimant did not accept the assignment because she did not want to drive to Medford. Claimant had worked only 20 minutes so far during May 2019, and claimant told the supervisor that she wanted more job assignments, but was not willing to drive to Medford. The supervisor had to participate in a conference call, and told claimant she would call claimant back. The supervisor did not call claimant back on May 6, so claimant called her, but was unable to contact her that day.

(7) On May 7, 2019, claimant saw on her work assignment application on her telephone that the employer had assigned her jobs in Medford and Roseburg. Claimant called and left another message with her supervisor. When claimant did not receive a return call from the supervisor by 9:56 a.m. that morning, claimant sent an email to the supervisor stating that she quit. Exhibit 1. Claimant quit work because the employer gave her few hours of work, and because her new supervisor failed to return claimant’s calls after assigning claimant work in Medford and Roseburg, although claimant had told her supervisor she was not willing to travel to those areas for work.

**CONCLUSION 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 . .

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<sup>1</sup> EAB has taken notice that Medford is 29 miles from Grants Pass, and that Roseburg is 69 miles from Grants Pass, which are generally cognizable facts. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.travelmath.com/drive-distance/from/Medford,+OR/to/Grants+Pass,+OR> and <https://www.travelmath.com/drive-distance/from/Roseburg,+OR/to/Grants+Pass,+OR>. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed facts will remain in the record.

<sup>2</sup> EAB has taken notice that Coquille and Gold Beach are both 125 miles from Grants Pass, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.travelmath.com/drive-distance/from/Coquille,+OR/to/Grants+Pass,+OR> and <https://www.travelmath.com/drive-distance/from/Gold+Beach,+OR/to/Grants+Pass,+OR>. Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

. 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. In a voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with the individual’s return to full time work or unless the cost of working exceeds the amount of remuneration received from work. OAR 471-030-0038(5)(e).

Claimant left work when she did because she received few hours of work from the employer, and because her new supervisor failed to return claimant’s calls after assigning claimant work in Medford and Roseburg. Although the record does not show how many hours claimant worked before March 25, 2019, it is reasonable to presume from claimant’s dissatisfaction with her hours after March 25 that she experienced a reduction in hours as a merchandiser. To the extent claimant left work because she experienced a reduction in her hours after she began working as a merchandiser for the employer, claimant did not show she had good cause to leave work. Claimant asserted that the occasions when she reported to stores for assignments, only to be unable to complete the assignments, were “frustrating,” “embarrassing,” and felt like “mental abuse.” Transcript at 21, 22. However, although it was frustrating for claimant to report for assignments she could not complete, the record does not show that continuing to work substantially interfered with claimant’s ability to look for other work, especially considering how few hours claimant was working for the employer.

Nor does the record show that the cost of working exceeded the amount of remuneration claimant received from work. The employer did not contest claimant’s contention that it would cost her more than she earned to travel to Roseburg, Coquille or Gold Beach, Oregon, or that claimant was unable to leave her husband to travel those distances. Although Medford is located within a reasonable commuting distance for work, based on the unreliability of the work, it is plausible that claimant might pay more for gasoline than she would earn if the work did not occur. However, claimant was not obligated to take work in Medford or other more distant locations. The record does not show that claimant was ever unsuccessful in having such assignments moved from her schedule, or that she had remote assignments that became overdue before the employer removed them from her schedule. In sum, because the record does not show that continuing to work substantially interfered with claimant’s return to full time work or that claimant’s costs to work exceeded the amount of remuneration claimant received from work in Grants Pass, the record does not show claimant had good cause to leave work under OAR 471-030-0038(5)(e).

To the extent claimant left work because the new supervisor failed to return claimant’s telephone calls the afternoon of May 6 and the morning of May 7, claimant did not show that she faced a grave situation such that she had no reasonable alternative but to leave work when she did. The record does not show that claimant faced a situation of such urgency that she had no alternative but to quit when the supervisor did not call her back on May 6 or 7. Claimant had the reasonable alternative of asking the supervisor to remove the assignments she did not want to do from her schedule, and waiting a reasonable time for the supervisor to reply to her request. Claimant therefore voluntarily left work

without good cause and is disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 19-UI-132897 is affirmed.

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

**DATE of Service:** August 19, 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 الإستئناف 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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