

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0683**

*Modified*  
*Late Request for Hearing Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 133534). On May 10, 2019, claimant filed a late request for hearing. On May 16, 2019, ALJ Kangas issued Order No. 19-UI-130022, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 30, 2019. On May 23, 2019, claimant responded to the appellant questionnaire. On June 18, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 19-UI-130022 was canceled and a hearing would be scheduled to address the timeliness of claimant's request for hearing and, if appropriate, the merits of decision # 133534. On July 2, 2019, ALJ Murdock conducted a hearing at which the employer did not appear, and on July 5, 2019 issued Order No. 19-UI-132842, allowing claimant's request for hearing and affirming decision # 133534.<sup>1</sup> On July 23, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record, as well as the new information in it about the discharge of the president of Jacklin Seed at page 4 of the argument. OAR 471-041-0090 (May 13, 2019) authorizes EAB to consider additional evidence if the party presenting it shows that the information is relevant and factors or circumstances beyond the party's reasonable control prevented them from offering the information during the hearing. The president's discharge may be relevant to claimant's contention that higher management at Jacklin Seed was involved in various

<sup>1</sup> Because the employer did not appear at the hearing, no evidence was presented to controvert claimant's evidence. Claimant's uncontested evidence is accepted as accurate where it was credible and not implausible.

deceptive practices and it appears that claimant was unable to present information about the president's discharge at hearing because claimant was not aware of it until August 19, 2019, after the hearing had taken place. Claimant's Written Argument has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's untimely request for hearing is **adopted**.

**FINDINGS OF FACT:** (1) JR Simplot Company employed claimant as a field consultant from May 27, 1997 until February 1, 2019. Claimant worked for the Jacklin Seed division, which the employer acquired in 1997. Among other things, the employer sold grass seed domestically and internationally.

(2) As field consultant, claimant worked with approximately 436 farms growing grass seed in the Willamette Valley in Oregon. Claimant contracted with those growers to provide several varieties of grass seed to the employer. Grass seed from the Willamette Valley was a desirable commodity for many of the employer's customers.

(3) Beginning around approximately 2014, claimant began to suspect that at least some members of management at Jacklin Seed were participating in the intentional mislabeling of grass seed as to its variety and origin. On occasion, claimant observed that some bags labelled as containing certain varieties of seeds were also labelled with the lot numbers of growers with whom claimant worked and claimant knew those growers did not produce the variety of seed shown on the bag. On several occasions, an employee who worked in the office of the Oregon manager of sales told claimant that the employer had arranged to have grass seed grown in Canada brought into Oregon, relabeled as having been grown in Oregon, and, once relabeled, sold to customers at a premium. That employee sent claimant pictures corroborate his concerns and asked claimant to investigate.

(4) Over time, claimant expressed concerns to the general manager, the head of sales and procurement, and the Oregon manager of sales about the mislabeling of grass seed and its unlawfulness. These members of management consistently told claimant that, since he did not work in sales or marketing, the alleged mislabeling was not a matter that should concern him. They told claimant to "just never mind about it" because claimant worked in production. Transcript at 46. On occasions when claimant brought his continuing concerns up with the Oregon manager of sales, that manager told him, "Get the hell out of there." Transcript at 37. No apparent action was taken on the concerns that claimant expressed.

(5) As more time passed, claimant suspected that the general manager knew about the mislabeling and was at least condoning it, and that the head of sales and procurement and the Oregon manager of sales were knowingly implementing the mislabeling scheme. Claimant discovered that the Oregon sales location was jokingly referred to as "the magic blender" because one variety of grass seed would arrive in Oregon from elsewhere and magically become a different variety when it was placed in bags for shipment to customers. Transcript at 46.

(6) Around early- to mid-2018, claimant began telling the production manager, who was his immediate supervisor, of his concerns that grass seed was being intentionally mislabeled, and providing the manager with documentation. The production manager had access to the sales and production records that would show if mislabeling was deliberately occurring. Sometime after claimant made his report to the production manager, that manager told claimant that, although he had initially been skeptical he had investigated and had verified that intentional mislabeling was occurring and that the mislabeled seed was being sold in China. The production manager told claimant he would speak to his supervisor, the general manager, about the mislabeling. The production manager met with the general manager about the mislabeling, but the general manager did not take steps to curb it. Claimant and the production manager ultimately concluded that the higher management of Jacklin Seed must at least be condoning the mislabeling scheme or actively participating in it. Claimant estimated that 90 percent of the grass seed the employer exported in 2018 was intentionally mislabeled.

(7) Around the same time, early- to mid-2018, after claimant talked to the production manager and raised concerns with the Oregon manager of sales, the Oregon manager confiscated claimant's computer without explanation. Without a computer or access to the company's computer system, it was difficult for claimant to perform his work, complete paperwork, or update the devices he used when he worked in the field. Claimant contacted the IT Department and requested another computer. The IT Department contacted the Oregon manager of sales about claimant's request, and the manager told IT not to send claimant a new computer. Claimant did not get a replacement computer until approximately mid-2019. Claimant concluded that the Oregon manager of sales was trying to make his job more difficult as retaliation for claimant's inquiries into the employer's mislabeling practices.

(8) Around this time, some seed growers with whom claimant worked told claimant that the Oregon manager of sales had been asking them to mislabel the grass seed that they had grown. The mislabeling would allow the employer to charge more for the seed than if it were accurately labelled. Some of the growers told claimant they had contacted an attorney, confirmed that it was illegal to mislabel seed, and had refused to do so. The growers told claimant that he should consider leaving work because of the employer's deceptive labelling practices.

(9) On January 1, 2019, the production manager announced that he was going to leave work and his last day would be February 1, 2019. Along with claimant, the production manager had questioned the employer's seed labelling practices and had gone to higher management about them. Claimant thought there would be no management member left to pursue correcting the employer's mislabeling practices when the production manager was gone. Claimant then learned that after the production manager's planned departure, the employer did not intend to replace him, but to divide his duties between the Oregon manager of sales and the head of sales and procurement and, as of February 1, 2019, they would become claimant's immediate supervisors. An office worker in the Oregon sales office told claimant around this time that the Oregon manager of sales had told her "things are going to change around here especially for [claimant]." Transcript at 56. Claimant thought the Oregon manager of sales was referring to his intention to continue mislabeling seed regardless of claimant's objections. Claimant thought he might be pressured to facilitate the mislabeling, given that the Oregon manager of sales and the head of sales and procurement were integrally involved in the mislabeling that was ongoing.

(10) As of 2019, claimant was experiencing growing stress over the employer's deceptive practices and his inability to stop them. Claimant was increasingly conflicted about working for an employer that he

had concluded engaged in fraud and deception. Claimant was often unable to sleep at night. Claimant also thought that if he did not dissociate from the employer, he would not be able to salvage the professional reputation he had spent over 22 years building in the grass seed industry when the employer's practices were finally exposed. Claimant was concerned that if his professional reputation were harmed, his future employment prospects in the grass seed industry would be jeopardized.

(11) In approximately the last week of January 2019, an employee mentioned to claimant that the Oregon manager of sales had instructed him to change a seed analysis to indicate there was no weed content in the seed sold to a customer when, in fact, there was weed content. Claimant told the employee not to falsify the seed analysis and that it was illegal to do so. The employee responded that the Oregon manager of sales "makes us do it all the time" and the employee said he going to falsify the analysis to avoid being fired. Transcript at 51.

(12) Sometime around February 1, 2019, several employees left their employment with the employer due to, among other things, the employer's intentional mislabeling of seed and falsification of seed analyses. The employees had expressed concerns similar to claimant's prior to leaving, but the employer did not take apparent action based upon the employees' reports.

(13) On February 1, 2019, the production manager's last day, the production manager left a packet of information for the employer setting out a chronology of the deceptive practices of which he was aware that the general manager, the head of sales and procurement, and the Oregon manager of sales had engaged in. On that same day, claimant notified the employer that he was leaving work, effective immediately. Claimant left work because the employer was continuing to engage in various deceptive practices in connection with the grass seed it sold, the complaints he made about those practices to members of management had not been successful in stopping them, and he felt it was pointless to make further complaints. The employer did not take apparent action in response to the information that the production manager left.

(14) Prior to leaving his job, claimant did not contact the employer's human resources department about his concerns because he had observed that the general manager had a close relationship with the human resources representatives and managers and often gave them gifts. Because the general manager and the head of sales and procurement were the highest members of management in the Jacklin Seed division, and the Oregon manager of sales was also in management, claimant thought it would be pointless to continue to complain to them about mislabeling and deception in grass seed sales. Claimant was afraid to complain to the Simplot management having authority over Jacklin Seed or to government regulatory agencies while still employed because he feared retaliation.

(15) After claimant left work, he sent an email to the chief executive officer (CEO) of JR Simplot, which he copied to the human resources department, setting out the unlawful activity that had taken place at Jacklin Seed while he was there and asking the CEO to look into it. Simplot's response stated, "[W]e trust our manager[s] in place and we think you have it all wrong." Transcript at 43. Claimant also met with representatives of the Oregon Department of Agriculture and the Oregon Department of Justice to initiate an investigation into the employer's labelling practices.

**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-132842 concluded that claimant did not show good cause for leaving work when he did because: the employer did not require him to engage in illegal activities; claimant did not prove that the employer was going to transfer him into a sales position associated with unlawful activities; he did not prove he would be legally liable for the employer’s activities; claimant did not adequately explain why the situation on February 1<sup>st</sup> was grave given that the practices had been ongoing for years; his fears of retaliation were not objectively reasonable; and claimant reasonably could have complained to regulatory agencies so they could investigate and resolve matters short of quitting his job. Order No. 19-UI-132842 at 5. The record does not support the order’s reasoning.

On this record, it is more likely than not that the employer’s labelling practices were unlawful.<sup>2</sup> Claimant continued working for the employer for a lengthy period of time after discovering the unlawful activities, but during that time he verified the practices and their prevalence, received reports from growers, tried to determine who was involved, and reported the practices to several levels of upper management in an effort to rectify the situation. It was not until February 1, 2019, when the production manager who acted as a buffer between claimant and the other managers engaging in the unlawful activities left his job, that claimant concluded further attempts to resolve the situation internally likely would be futile and quit his job.

Although claimant had not been instructed to personally participate in unlawful activities and presumably would not have been liable for them, claimant’s lack of direct involvement in unlawful activities does not mean his situation was not grave. He did not know what would happen with his job after February 1<sup>st</sup>, or whether he might be called upon to participate in the employer’s sales activities after that date. Some of the seed growers with whom claimant worked had reported to claimant that they had been instructed to mislabel grass seed they had grown, and, presumably, participate directly in unlawful activities. Growers and others in the industry reasonably associated claimant with the employer and the employer’s unlawful activities; it therefore was not unreasonable for claimant to think his reputation would be irreparably damaged by his continued association with the employer. Claimant’s situation was grave.

On this record, there were no reasonable alternatives to claimant leaving work when he did. Continuing to work until getting a different job is never considered a reasonable alternative to quitting. Nor was it reasonable to expect claimant to continue working for the employer while waiting for some unknown

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<sup>2</sup> See ORS 633.651(1)(b) (a person may not offer for sale in Oregon any agricultural seed which bears a label that is false or misleading); OAR 603-056-0105(2) (agricultural seeds offered for sale must be labeled); OAR 603-056-0480(1) (penalties for selling or offering for sale an agricultural seed which is mislabeled as to kind, variety, origin, lot number, seller of the seed, etc.).

period of time for a regulatory agency to address the problem.<sup>3</sup> Given the many complaints claimant unsuccessfully made to all levels of management, and the continuation of the unlawful practices and retaliation he experienced, claimant reasonably concluded that it would be unreasonable and futile to make additional complaints to the same people.<sup>4</sup> The fact that the employer responded to claimant's post-employment complaint to human resources by affirming its trust in its managers corroborates claimant's belief that any further pre-leaving complaints to the employer would have been futile.

On this record, claimant's circumstances were grave and he had no reasonable alternatives to leaving work. Claimant had good cause to leave work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 19-UI-132842 is modified, as outlined above.

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

**DATE of Service: August 29, 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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<sup>3</sup> *See e.g. J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (where unfair labor practices are ongoing or there is a substantial risk of recurrence, it is not reasonable to expect claimant to continue to work for an indefinite period of time while the unfair practices are handled by BOLI).

<sup>4</sup> *See Strutz v. Employment Dep't.*, 247 Or App 439, 270 P3d 357 (2011) (where claimant, on more than one occasion, raised his concerns with his superiors, nothing was done, and there was no evidence that any different result would obtain, making further internal complaints was not a reasonable alternative to quitting).



# 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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.