

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0690**

*Reversed and Remanded ~ Regarding Week 19-19 Only*  
*Reversed ~ Benefits Allowed Beginning Week 20-19*

**PROCEDURAL HISTORY:** On June 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140247). Claimant filed a timely request for hearing. On July 18, 2019, ALJ Seideman conducted a hearing, and on July 19, 2019, issued Order No. 19-UI-133668, affirming the Department's decision. On July 26, 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.

**FINDINGS OF FACT:** (1) Tru Independence LLC employed claimant from July 1, 2014 until May 10, 2019 as its chief compliance officer (CCO) and director of human resources. The employer provides office support to registered investment advisory firms.

(2) In June 2018, the employer's accountant passed away from cancer. Claimant assumed her coworker's accounting duties, increasing the number of hours claimant worked per week. Claimant believed at the time that it would be a short-term increase in her hours. However, from June 2018 until the end of her employment, claimant worked an average of 70 hours per week, including during evenings, weekends, vacations, and holidays.

(3) Claimant became overwhelmed by her work schedule, and beginning in December 2018, informed the employer that she was not able to continue working the number of hours she had been working, and began asking the employer for additional staff. Claimant asked the employer repeatedly from December 2018 until May 2019 to hire additional staff to take some of her duties.

(4) From June 2018 until May 2019, the employer's number of clients doubled. The employer planned to expand more after May 2019.

(5) Claimant had an anxiety disorder and a heart condition. During 2019, claimant's health began to decline due to work stress. Claimant experienced panic attacks, including one in February 2019 that

resulted in hospitalization. Claimant also experienced weight loss, insomnia, infections associated with depressed immunity, and heart problems. Claimant began taking medication for a heart condition and her anxiety. Two of claimant's health care providers recommended that she leave her job. Her primary care provider advised claimant that her health would not improve, and would continue to decline, unless she reduced the number of hours she was working in the stressful environment in which she worked. All her providers recommended she reduce her work hours because 70 hours per week was "detrimental to [her] health." Transcript at 8. Claimant did not reduce her hours because she was not able to complete her work duties, even when she worked 70 hours per week. When claimant had health issues, she worked from home.

(6) In April 2019, claimant told the employer's chief executive officer (CEO) and another partner in the firm that her healthcare providers recommended a reduced work schedule. Claimant told them that she would not reduce her work schedule because the hours she worked were required to fulfill the requirements of her position. During the subsequent two weeks, claimant worked 80 hours and 50 hours each respective week. After those two weeks, the CEO asked claimant via email for a copy of medical documentation recommending a reduced work schedule, and asked claimant, "[P]lease confirm that you have no intention of reducing your weekly hours." Transcript at 9. Claimant sent an email in response stating that she was "concerned" about the CEO's email. *Id.* Claimant did not receive a response.

(7) The Securities and Exchange Commission (SEC) conducted an audit of the employer and told claimant that she did not have sufficient staff and resources to fulfill the duties assigned to her regarding the 75 employees for whom she was responsible. Claimant told the CEO the SEC's concerns.

(8) During 2019, the employer obtained a new payroll provider, implemented a new compliance system, and hired a new employee with insurance experience. The new employee was not qualified to take over any of claimant's compliance or human resources duties. The changes did not reduce claimant's work schedule.

(9) In April 2019, the employer brought on a compliance attorney on full retainer to provide oversight for the employer's compliance department. The attorney was a resource for claimant, but did not take over any of claimant's daily job duties related to compliance.

(10) On April 30, 2019, the CEO and another partner in the firm met with claimant and told her the employer had hired another CCO, who would start work on May 13, 2019, and that "there is an exciting new job for [claimant]." Transcript at 11. Claimant requested a job title, description, and the salary for her future position before she left the meeting. The employer told claimant that her salary would remain the same for 90 days, but she did not receive additional information about her duties during or after the 90 days, or what would happen to her salary after the 90 days. Claimant sent several emails to the CEO asking for more information about her future position. The employer did not respond to claimant's requests for additional information. Claimant requested to meet with the CEO, even telephonically, but the CEO did not meet with claimant.

(11) On May 3, 2019, claimant sent an email to the CEO with a proposed outline of her position and duties going forward. The CEO responded that he was "aware of the additional resources that were needed internally, without [claimant's] input, and that he has been consulting with experience [sic] and

knowledgeable . . . individuals . . . and didn't really need [claimant's] feedback." Transcript at 28. He did not provide claimant additional information about her position.

(12) By May 2019, claimant had been using medication to "lower" her anxiety, but her health still was "not good." Transcript at 17.

(13) On May 5, 2019, claimant gave the employer notice that she would resign on May 17, 2019. Claimant resigned because of how her work schedule and the uncertainty of the work demands of her future position affected her health.

(14) The employer expected that claimant would spend May 13 through May 17, 2019 with the new CCO, "getting her up to speed." Transcript at 29.

(15) On May 10, 2019, claimant met with the CEO. He offered claimant a choice of leaving work on May 10 or May 17, 2019. Claimant chose to leave work on May 10.

(16) Claimant's health conditions "evened out" after she quit work with the employer. Transcript at 17.

**CONCLUSION AND REASONS:** Claimant's planned voluntary leaving on May 17, 2019 was with good cause, and she is not disqualified from receiving unemployment insurance benefits based upon her planned voluntary leaving. However, claimant actually left work on May 10, 2019, and the record fails to show whether claimant's actual leaving was with or without good cause; the record therefore fails to show whether or not claimant should be disqualified from benefits for the period between the week of her actual leaving and the week of her planned leaving. Order No. 19-UI-133668 is therefore reversed in part and this matter is remanded in part for further proceedings.

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). Claimant had a heart condition and an anxiety disorder, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for their employer for an additional period of time.

Order No. 19-UI-133668 concluded that claimant did not show that her situation was so grave that she had no reasonable alternative but to quit, and therefore quit work without good cause.<sup>1</sup> The order reasoned that claimant "could have continued working and seek work, while earning a good salary."<sup>2</sup> Order No. 19-UI-133668 is not supported by substantial evidence in the record, and is reversed as to weeks starting May 12, 2019, and remanded for the week of May 5 through May 11, 2019.

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<sup>1</sup> Order No. 19-UI-133668 at 3.

<sup>2</sup> *Id.*

The effect of claimant's working conditions on her health created a grave situation for claimant. The order stated that claimant was "treated for [health problems] and seemed to be improving."<sup>3</sup> However, although claimant had "gotten [her] medication to a point where [her] anxiety levels were lowering," claimant's health was still "not good," included medication and hospital treatment, and did not normalize until after she left work with the employer.<sup>4</sup> Claimant asked the employer multiple times to hire new staff to reduce claimant's workload. The order stated that the employer hired one other employee who would assume part of claimant's functions.<sup>5</sup> However, the record shows that the new staff hired or retained by the employer before May 2019 did not assume any of claimant's daily duties, and claimant continued to work an average of 70 hours per week. The new CCO was to begin work on May 13. The employer expected claimant to spend a week training the new CCO, which would presumably add to claimant's work duties, at least temporarily. Moreover, although the employer told claimant her salary would remain the same for the next 90 days, it did not provide claimant a job title or description or assure her that her work responsibilities and hours would decrease sufficiently to reduce the impact her schedule had on her health after the new CCO began work. Nor did the employer assure claimant it would hire additional staff to address its plan to expand in the future. Based on claimant's workload, the employer's lack of clear communication about how her future position would impact her work schedule, and the ongoing risk to claimant's health, no reasonable and prudent person with the characteristics and qualities of an individual with a heart condition and anxiety disorder would have continued to work for their employer for an additional period of time after May 17, 2019 (week 20-19). Claimant's planned May 17<sup>th</sup> voluntary leaving was, therefore, with good cause. Order No. 19-UI-133668 is therefore reversed with respects to weeks beginning week 20-19.

Claimant actually left work on May 10, 2019, however, because when she was offered the choice of working through her planned leaving date on May 17<sup>th</sup> or quitting on May 10<sup>th</sup>, she chose to leave on the 10<sup>th</sup>. Because claimant notified the employer that she planned to leave work on May 17, 2019, and EAB has determined that the planned quit would be for good cause, and claimant voluntarily left work less than 15 days prior to the date of the impending good cause quit date, it is necessary to assess if the early quit was for good cause in order to decide if claimant should be disqualified from benefits for the week of May 5 through May 11, 2019 (week 19-19), the period between the actual quit and the planned quit.

For purposes of applying subsection (2) of [ORS 657.176], when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The separation would be for reasons that constitute good cause;
- (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and

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<sup>3</sup> *Id.*

<sup>4</sup> Transcript at 16.

<sup>5</sup> Order No. 19-UI-133668 at 3.

(c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving,

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

ORS 657.176(6). However, the record does not include any information about why claimant chose to leave work on May 10 instead of May 17. To determine if claimant's voluntary leaving on May 10, 2019 was for good cause, the ALJ must develop the record as to why claimant chose to leave work on May 10 rather than continuing to work until May 17. The ALJ must ask questions to discern if no reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairments would have continued to work for the employer until May 17, 2019, and whether there were reasonable alternatives for claimant to leaving work on that date.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether or not claimant should be disqualified from receiving benefits during week 19-19 (in other words, whether claimant had good cause to leave work one week prior to the date of her planned good cause voluntary leaving date), Order No. 19-UI-133668 is reversed and remanded for that inquiry.

In sum, Order No. 19-UI-133668 is reversed with respect to weeks beginning week 20-19; claimant's May 17<sup>th</sup> planned voluntary leaving was with good cause, and she may not be disqualified for benefits. Order No. 19-UI-133668 is reversed and remanded only for an inquiry into whether claimant should or should not be disqualified during week 19-19, the week prior to her planned voluntary leaving.

**DECISION:** Order No. 19-UI-133668 is set aside in its entirety, and remanded *only* for an inquiry into claimant's qualification for benefits during week 19-19. Claimant is not disqualified based upon this work separation beginning week 20-19.

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

**DATE of Service: August 29, 2019**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-133668 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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**

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**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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