

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0903**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 2, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause (decision # 151339). The employer filed a timely request for hearing. On September 4, 2019, ALJ Murray-Roberts conducted a hearing and on September 6, 2019, issued Order No. 19-UI-136172, concluding claimant voluntarily left work without good cause. On September 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rise Services Inc. (RSI), a service provider for individuals with disabilities, employed claimant as a direct support professional from May 6, 2019 until May 7, 2019.

(2) In approximately 1998, claimant worked as a direct service provider in a group home where the use of his personal vehicle was required for emergencies only as the group home had its own vehicles for its ordinary transportation needs. In 2019, claimant's personal vehicle was 17 years old and during the preceding two years "had four breakdowns." Transcript at 6. Also in 2019, claimant did not own a cell phone, although he did have a laptop computer.

(3) On May 2, 2019, claimant completed a job application for the position of direct support professional with RSI. The application asked, "Do you have a personal vehicle?" to which claimant responded, "Yes." Exhibit 1 at 3. The job application also asked, "Are you willing to transport clients in your personal vehicle?" to which claimant also responded, "Yes." Exhibit 1 at 3. Claimant also interviewed for the position that day. During the interview process, the interviewer also asked claimant if he had a personal vehicle, and if he was willing to transport clients, to which claimant responded, "Yes." Exhibit 1. The interviewer also asked claimant if he had access to a computer and the internet on a daily basis, to which claimant also responded, "Yes." Exhibit 1. When the employer's administrative assistant gave claimant paperwork to fill out for the position, including a "Reference Verification Form," the assistant gave claimant contact information for contacting the employer at its office by both telephone and email. Transcript at 20; Exhibit 2.

(4) Based on claimant's job application and interview, RSI hired claimant as a direct support professional and scheduled him for a paid training orientation on May 6 and May 7, 2019.

(5) During the orientation on May 6 and 7, 2019, claimant learned that direct support professionals often transported clients in their personal vehicles as part of their assignments, which were sometimes located 40 miles away from claimant's residence. Claimant did not have a cell phone and learned that direct support professionals regularly clocked in and out and sent text messages with their personal cell phones. The orientation was conducted by a direct support professional rather than by one of the employer's supervisory or management staff. Although claimant became concerned during the orientation about whether his 17 year-old vehicle would be adequate for the duties described or whether he could even work as a direct support professional without a cell phone, claimant did not ask the person who conducted the orientation if there were positions available which did not require the use of personal vehicles or cell phones.

(6) On the evening of May 7, 2019, claimant left a voicemail with the employer at its main office in Eugene stating that he would not be returning to work. Claimant quit work because he did not want to use his personal vehicle to travel to assignments or transport clients given the vehicle's condition and his desire to avoid additional "wear and tear," and because he did not own a cell phone, which he believed was necessary for the job. Transcript at 13-14, 17-18.

(7) At no time during or after the orientation was completed on May 7, 2019 did claimant contact the employer's supervisory or management staff at its office to discuss his concerns or whether there were positions available which did not require the use of a personal vehicle or cell phone. At the time claimant quit, the employer did not require the use of a cell phone to work as a direct support professional and there were alternative methods for clocking in and out for shifts. The employer typically tried to match employee assignments with employee residential locations and preferences and also operated a residential home where the use of a personal vehicle was not necessary.

**CONCLUSIONS 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 . . . 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 case of voluntary leaving, 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).

Here, claimant did not establish that he had good cause for leaving work with the employer when he did. Claimant admitted that he possessed telephone number and email contact information for the employer's office and used at least one of the employer's telephone numbers to leave a voice message that he would not be returning to work. Transcript at 5, 20. It was a basic and reasonable step to contact management or supervisory personnel at the employer's office to discuss any concerns claimant had about the need to

use a personal vehicle or cell phone. Had claimant done so, he could have learned that the employer typically tried to match its direct support professionals with their work preferences, and, more likely than not, that the employer could have given him a work assignment that satisfied his concerns. He also could have learned that a cell phone was not necessary to perform the job of direct support professional and that there were alternative methods of communication available for, among other things, clocking in and out of work during a shift. On this record, claimant failed to show that his circumstances were so grave that no reasonable and prudent newly hired employee in his circumstances would have pursued the reasonable alternative of contacting the employer's supervisory personnel to discuss his concerns about his vehicle and telephone limitations rather than quitting without doing so.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned at least four times his weekly benefit amount from work in subject employment.

**DECISION:** Order No. 19-UI-136172 is affirmed.

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

**DATE of Service: October 18, 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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