

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0913**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work for a disqualifying act (decision # 100533). On April 8, 2019, decision # 100533 became final without claimant having filed a timely request for hearing. On April 19, 2019, claimant filed a late request for hearing. On April 23, 2019, ALJ Kangas issued Order No. 19-UI-128653, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 7, 2019. On April 30, 2019, claimant responded to the appellant questionnaire. On May 2, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 19-UI-128653 was canceled. On May 7, 2019, OAH mailed notice of a hearing regarding decision # 100533 scheduled for May 17, 2019. On May 17, 2019, claimant failed to appear for the hearing and ALJ Janzen issued Order No. 19-UI-130153, dismissing claimant's request for hearing for failure to appear. On May 23, 2019, claimant filed a timely request to reopen the May 17, 2019 hearing. On June 20, 2019, OAH mailed notice of a hearing scheduled for July 3, 2019. On July 3, 2019, ALJ Janzen conducted a hearing, and on July 9, 2019, issued Order No. 19-UI-132956, allowing claimant's request to reopen and re-dismissing claimant's late request for hearing. On July 23, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

On August 9, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0692, modifying Order No. 19-UI-132956 by affirming that portion of the order allowing claimant's request to reopen, but granting claimant's late request for hearing and remanding the case to OAH for a hearing on the merits of decision # 100533.

On August 29, 2019, ALJ Janzen conducted a hearing on the merits of decision # 100533, and on August 30, 2019, issued Order No. 19-UI-135914, concluding the Department's drug and alcohol adjudication policy under ORS 657.176(2)(h), (9), (10), and (13), OAR 471-030-0125 did not apply because claimant quit work for a reason not governed by that policy, but that under ORS 657.176(2)(c) and OAR 471-030-0038(4) (December 23, 2018), claimant voluntarily left work without good cause. On September 18, 2019, claimant filed an application for review of Order No. 19-UI-135914 with the EAB.

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 concluding the Department's drug and alcohol adjudication policy did not apply in this case is **adopted**. The remainder of this decision will focus entirely upon whether claimant voluntarily left work without good cause under 657.176(2)(c) and OAR 471-030-0038(4).

**FINDINGS OF FACT:** (1) Mercedes Benz of ABQ employed claimant as a salesperson from January 29, 2019 through February 15, 2019.

(2) Claimant had Parkinson's disease and neuropathy of the feet and legs, which affected his balance and ability to walk, especially early in the day. Claimant's condition was diagnosed shortly after he left the employment at issue.

(3) One of claimant's first meetings at hire was with the employer's general manager (RB). After his interview with RB, which claimant considered "wonderful," he believed his employment was "going to be great." Transcript at 14-15. However, shortly thereafter, claimant was assigned to work under a sales manager (JR) who regularly used foul language when speaking to claimant, and whom claimant believed acted unprofessionally and "hostile" toward claimant. Transcript at 8. He had called claimant "a fucking idiot," and often spoke to him, stating "'f this, 'f that, 'f this," berating him in front of coworkers and even customers. Transcript at 7-8.

(4) On February 15, 2019, an employee told JR that claimant appeared to have poor balance and memory difficulties, and had exhibited unusual speech that morning when he arrived at work. JR concluded that claimant may have been exhibiting symptoms of intoxication and was concerned about him doing test drives with customers. JR approached claimant and said, "Dave, get the fuck in my office." Transcript at 6. Claimant met JR in his office where JR explained what other employees had observed and asked him if he should be doing test drives. Claimant explained that he was often unbalanced in the morning due to an undiagnosed medical condition but would be okay to drive later in the day. JR then asked claimant if he would be willing to take a drug test. Claimant responded, "Let's go right now," to which JR responded, "Get the fuck out of my office and go over to yours and do your job." Transcript at 6-7. Shortly thereafter, a coworker saw that claimant was upset and approached claimant and told him, "Just try to weather this storm." Transcript at 8. However, claimant returned to JR's office and told him he was quitting due to JR's conduct and language toward him.

(5) Before quitting, claimant did not complain to the employer's Human Resources representative, the general manager, or anyone else in management about JR's conduct.

**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. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000) (in a

voluntary leaving case, claimant has the burden of proving good cause by a preponderance of the evidence).

Claimant quit work on February 15, 2019 because he decided that he could no longer tolerate JR's unprofessional and "hostile" conduct and language toward him. The record shows that claimant's supervisor JR belittled him and used foul language when speaking to him, often in front of coworkers or customers. To the extent his supervisor's conduct toward him in front of customers may have limited his ability to close sales or caused him stress, embarrassment or anxiety, claimant's circumstances created a grave situation for him. However, claimant admittedly did not report his concerns to anyone in the employer's management. Transcript at 13. Claimant explained that he did not complain to the human resources representative because he had spoken to her before on unrelated matters and concluded that "she wasn't a whole hell..of a lot nicer. You know, I'd walk into her office about some other concerns and, boy, I was putting her out... in any – anything I asked." Transcript at 14. However, claimant had been impressed with the employer's general manager from the beginning and could have proceeded up the chain of command and complained to him about JR's conduct, but did not do so. Viewing the record as a whole, claimant failed to meet his burden to show that no reasonable and prudent salesperson in his circumstances would have pursued those two reasonable alternatives before abruptly quitting when he did and continued to work for the employer after February 15, 2019.

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

**DECISION:** Order No. 19-UI-135914 is affirmed.

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

**DATE of Service: October 25, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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