

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1039**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and was disqualified from receiving benefits effective June 23, 2019 (decision # 74533). Claimant filed a timely request for hearing. On August 8, 2019, ALJ Monroe conducted a hearing, and on August 16, 2019 issued Order No. 19-UI-135192, affirming the Department's decision. On August 21, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On September 23, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0794, reversing and remanding the matter. On October 8, 2019, ALJ Monroe conducted a hearing, and on October 16, 2019 issued Order No. 19-UI-138228, re-affirming the Department's decision. On November 1, 2019, claimant filed an application for review of Order No. 19-UI-138228 with EAB.

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Shilo Management Corporation employed claimant as a laundry attendant from May 4, 2019 to June 23, 2019.

(2) At all relevant times, claimant was diagnosed with post-traumatic stress disorder (PTSD), anxiety, panic attacks, and major depressive disorder.

(3) During claimant's employment, her supervisor hung up on her when she called in sick, used racially charged words to refer to coworkers, and told claimant she would be replaced if she took time off for a medical appointment. A coworker was in the workplace while drunk and behaving inappropriately. Four of claimant's coworkers gossiped and ganged up on claimant.

(4) Claimant experienced feelings of anxiety and panic because of her supervisor and coworkers' behavior toward her. She felt as if she could not do anything right, and felt a great deal of stress.

(5) On approximately June 1, 2019, claimant's supervisor yelled at claimant. Claimant experienced a panic attack, and had to go to the bathroom because she began crying at work. The supervisor later approached claimant and apologized for yelling.

(6) In a previous job, claimant had complained about some working conditions. As a result of claimant's complaints, she got into trouble, and her previous employer gave her write-ups. While working for Shilo Management Corporation claimant tried to talk to her supervisor sometimes, but her supervisor was too busy to stop and talk to claimant, she had hung up on claimant in the past, and claimant was afraid that she would get into trouble if she complained.

(7) At all relevant times, claimant was taking medication for her mental health. She was having problems with the medication and it did not always work. As a result, and because of her working conditions, claimant was not thinking clearly. She felt it was inappropriate for her supervisor to yell at her, and felt frustrated and confused. She was waking up sad and experiencing a lot of anxiety, panic attacks, crying, feeling unsafe, and feeling fear.

(8) Effective June 23, 2019, claimant quit work so she would no longer be in fear at work or have to work with people who yelled at her. At the time claimant felt like she had made a good decision to quit work, and felt significant relief after quitting.

**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). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). Claimant had PTSD, major depressive disorder, anxiety, and panic attacks, which are permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with an impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such an impairment would have continued to work for their employer for an additional period of time.

The order under review concluded claimant quit work without good cause, in part because the supervisor's treatment of her was not so offensive or oppressive that no reasonable and prudent person with PTSD, anxiety, and depression would have continued to work for the employer. Order No. 19-UI-138228 at 3. The record does not include any evidence about what a reasonable and prudent person with PTSD, anxiety, and depression would do in circumstances similar to what claimant faced when she quit. Rather, we have only evidence of what claimant perceived and did. The question is, then, whether claimant acted reasonably in light of her perceptions.

Claimant was an individual with PTSD, anxiety, panic, and major depressive disorder, who was experiencing problems with her medication, waking up sad and experiencing fear and unsafe feelings. In that context, she experienced working conditions including yelling, drunken behavior, and her

coworkers gossiping and ganging up on her, all of which caused claimant to experience panic and anxiety attacks, crying, and feeling that she could not do anything right. Any reasonable and prudent person with an impairment similar to claimant's, whose working conditions caused that reaction, would likely consider the working conditions grave.

The order under review also concluded that claimant quit work without good cause, in part because she had reasonable alternatives to quitting work, including contacting the on-site manager or human resources, or requesting accommodations for her mental health conditions. Order No. 19-UI-138228 at 3. The record was not developed at all as to what accommodations claimant might have requested with respect to her mental health conditions, or even whether the employer had accommodations available for her. Requesting accommodations was not a reasonable alternative on this record.

Although a reasonable and prudent person without impairment might have considered contacting the on-site manager or human resources a reasonable alternative to quitting, the record does not suggest that a person with impairments such as those claimant experienced would. Claimant testified that she was afraid and unsafe at work, that her attempts to speak with her supervisor were unsuccessful, and that her work experience in her last job had taught her that complaining would get her in trouble or result in her getting written up. In that context, and given that claimant described her mental state at the time as confused, it is more likely than not that a reasonable and prudent person with impairments similar to claimant would not have considered contacting the on-site manager or human resources to complain a reasonable alternative to quitting work.

Under the circumstances described at hearing, the record shows that a reasonable and prudent person experiencing PTSD, anxiety, panic, and major depressive disorder, whose working conditions caused them to feel afraid and unsafe, cry in the bathroom at work, and have panic attacks, would more likely than not conclude that they had no reasonable alternative but to quit work. Claimant therefore voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Order No. 19-UI-138228 is set aside, as outlined above.

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

**DATE of Service:** December 4, 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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# 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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