

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1067**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On October 17, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 111626). Claimant filed a timely request for hearing. On November 4, 2019, ALJ Scott conducted a hearing, at which the employer failed to appear, and issued Order No. 19-UI-139175, affirming the Department's decision. On November 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Tuefel Landscape employed claimant as a laborer from October 2, 2019 to October 4, 2019. Claimant was hired by an employer manager (LR).

(2) Claimant lived in Vancouver, Washington during his employment. The employer's headquarters was located in Hillsboro, Oregon, approximately 30 miles from claimant's residence.<sup>1</sup> During the first three days of claimant's employment, it took him about 40 minutes to drive to work, but two to three hours to drive home after work, depending on traffic.

(3) During his three days on the job, claimant encountered some work difficulties. Most of the on-the-job communication was in Spanish, which claimant did not speak or understand. Consequently, claimant did not know immediately where his work assignment would be located. Once, claimant got into a truck to go to a job but was directed to another truck because he had not understood his job assignment. On another occasion, claimant needed someone to hold an L-bracket steady while he secured it to a marble floor, but no one was available to help him. Two coworkers were available nearby, but claimant did not ask either of them to help. He attempted to ask a third coworker for help, but that coworker stayed for

---

<sup>1</sup> EAB has taken notice of the approximate distance between claimant's residence and the employer's headquarters, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). See, <https://www.google.com/maps/dir/11915+NE+102nd+St,+Vancouver,+WA+98682/7431+Northeast+Evergreen+Parkway,+Hillsboro,+OR/@45.6006538>. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

only a few minutes before he left and did not return for several hours. On a third occasion, claimant had to make several trips to and from a battery source or charger to replace batteries that would not hold a charge while he drilled a hole. Claimant concluded that he was expected to perform his job without “proper tools.” Audio Record at 18:00-21:00.

(4) Claimant told one project manager about his difficulties, but the project manager told him, “That’s the job.” Audio Record at 17:00-17:45. Claimant then attempted to call LR, who had hired him, one time to discuss his difficulties. Claimant did not reach LR, or leave him a message.

(5) On October 4, 2019, claimant called LR a second time and did reach him. Claimant told LR that he was quitting, but did not explain why, and LR did not ask why claimant was quitting. Claimant had concluded that it was preferable for him to quit work rather than communicate the difficulties he was experiencing on the job.

(6) On October 4, 2019, claimant quit work because of the length of his commute and his working conditions.

**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 quit case, claimant has the burden of proving good cause by a preponderance of evidence. *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000).

Claimant quit work, in part, due to the length of his commute to and from work. However, claimant had been on the job only three days before he quit. Claimant’s commute distance was approximately 30 miles and his commute time ranged from 40 minutes to three hours, depending on traffic. Based on his limited experience with his commute, claimant failed to show that the length of that commute was so grave a circumstance that no reasonable and prudent person would have continued to work for the employer for an additional period of time. Claimant also did not discuss his concerns about the length of his commute after work with the employer, for example, to ask to change his work schedule so he could commute home when traffic conditions were more favorable.

Claimant also quit work due to his working conditions. Although claimant did not speak or understand Spanish, which many workers and managers typically spoke at work, he was able to express some of his difficulty with those conditions to the project manager who told him, “That’s the job.” He was also able to express to the person who hired him that he was quitting, and to discuss receiving his check. Audio Record at 22:30-23:10. Although claimant also believed he was expected to perform the job without “proper tools,” he did not assert or show that circumstance ever created a safety issue for him or that he was criticized for inadequate work performance caused by the lack of such tools. Audio Record at 18:00-21:00. Claimant failed to show that his working conditions created a grave situation.

The record fails to show that claimant ever discussed his language difficulties, tool concerns, or lack of assistance with several tasks with LR, the person who hired him. The record also fails to show that claimant ever inquired whether the employer had anyone else with whom he could discuss his difficulties, for example, another manager or human resources department. An employer cannot reasonably be expected to address and rectify problems of which it is not aware. Although claimant may have preferred to quit work rather than communicate the difficulties he was experiencing on the job to the employer, his failure to pursue such alternatives prior to quitting was not objectively reasonable.

Accordingly, 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-139175 is affirmed.

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

**DATE of Service: December 12, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



# 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.